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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 86

J. R. TREAT, AS TREASURER AND *EX OFFICIO* TAX COLLECTOR OF THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, ET AL., APPELLANTS,

vs.

GRAND CANYON RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED JULY 8, 1912.

(21,748.)

(21,748.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 522.

J. R. TREAT, AS TREASURER AND *EX OFFICIO* TAX COLLECTOR OF THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, ET AL., APPELLANTS,

vs.

GRAND CANYON RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 27, 1909.

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1 In the Supreme Court of the Territory of Arizona.

Cause No. 1092.

J. R. TREAT, as Treasurer and ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and The County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Appeal from District Court Coconino County, Fourth Judicial District, Territory of Arizona.

Henry F. Ashurst, Edward M. Doe and Hon. E. S. Clark, Attorney General of Arizona, for appellants.
T. J. Norton, Paul Burks, and U. T. Clotfelter, for appellee.

Be it remembered that on this day to-wit: the 24th day of December, 1908, came the appellants in the above entitled cause by their attorneys, Mr. Henry F. Ashurst, Mr. Edward M. Doe and Hon. E. S. Clark, and filed in the clerk's office of the Supreme Court of the Territory of Arizona its abstract of record, in words and figures following, to-wit:

2 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County or Coconino.

No. 766.

THE GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,

v.

THOMAS DEVINE, as Treasurer and ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendants.

Complaint.

The plaintiff above named complains of the defendants and for cause of action alleges:

I.

That the plaintiff is now and ever since the 10th day of August, 1901, has been a railway corporation duly organized and existing under and by virtue of the laws of the territory of Arizona.

II.

That the defendant, Thomas Devine, is now and ever since the 1st day of January, 1905, has been the duly elected, qualified and act-

ing treasurer and ex-officio tax collector in and for the county of Coconino, territory of Arizona, and that said county of Coconino is now and at all times hereinafter mentioned has been a
3 municipal corporation duly organized and existing under the laws of the territory of Arizona.

III.

That the Santa Fe and Grand Canyon Railroad Company, predecessor in interest to certain property rights of the plaintiff herein, as will more fully hereinafter appear, was a corporation duly organized and existing under and by virtue of the laws of the territory of Arizona, that said Santa Fe and Grand Canyon Railroad Company, by its articles of incorporation duly filed in the office of the secretary of Arizona, was authorized and empowered, among other things, to construct, operate and maintain a railroad from a point near Williams northerly in said county of Coconino, territory of Arizona, to a point on the rim of the Grand Canyon, also in said county and territory; that the plaintiff herein, the Grand Canyon Railway Company, by its articles of incorporation, was authorized and empowered, among other things, to construct, operate and maintain the same road.

IV.

That on August 10, 1899, the said Santa Fe and Grand Canyon Railroad Company, duly executed and thereafter, on the 19th day of August, 1899, duly filed with the secretary of the territory of Arizona, a statement in writing setting forth the general course and the terminal points of the railroad proposed to be constructed by it, and therein and thereby stated among other things that it proposed to construct a railroad from a point near Williams northerly in Coconino county to a point on the rim of the Grand Canyon, and that the terminal points of said railroad were a point near
4 Williams and a point at or near the rim of the Grand Canyon northerly from Williams, both in Coconino county; and that said statement was filed in pursuance of the provisions of Act No. 68 of the 19th Legislative Assembly, approved March 16, 1899.

V.

That thereafter, on the 7th day of October, 1899, the board of directors of said Santa Fe and Grand Canyon Railroad Company duly adopted the survey and location of said proposed railroad theretofore made, and on the 22nd of October, 1899, commenced, in good faith, the construction of said road; and thereafter, upon the 30th day of October, 1899, filed with the secretary of the territory of Arizona, a statement showing the amount of said road which had been constructed.

VI.

That thereafter, on the 22nd day of December, 1900, said Santa Fe and Grand Canyon Railroad Company filed with the secretary of the territory of Arizona a map showing the railroad constructed

by it during the year ending October 22, 1900, amounting to fifty-six and thirty-four hundredths (56.34) miles.

VII.

That thereafter, on June 8, 1901, a decree of foreclosure and order of sale was made and entered by the above court in an action brought by Thomas Bassford against said Santa Fe and Grand Canyon Railroad Company, et al., said action being No. 512, wherein and whereby this court directed the sale of all rights, franchises, privileges of whatsoever nature, kind or description, including all exemptions from taxation owned or possessed by the defend-
5 ant railroad company or which it or its assigns may or can hereafter acquire, own or possess through or under the charter of said railroad company, and that thereafter, pursuant to said decree of foreclosure and order of sale on the 18th day of July, 1901, there was sold to E. D. Kenna, Byron L. Smith, and James H. Eckles all of the property of the said Santa Fe and Grand Canyon Railroad company, "including all exemptions from taxation owned or possessed by the defendant railroad company or which it or its assigns may or can hereafter acquire, own or possess through or under the charter of said railroad company."

VIII.

That on the 20th day of July, 1901, there was entered and filed in said action No. 512 a decree of court confirming the sale made by E. B. Gage, a special master, to E. D. Kenna, Byron L. Smith and James H. Eckles, and said E. B. Gage, receiver and special master, was by said decree of confirmation authorized and directed to turn said property over to said purchasers.

IX.

That on the 30th day of July, 1901, the articles of incorporation of the Grand Canyon Railway Company, plaintiff herein, were duly executed and were, on the 10th day of August, 1901, duly filed in the office of the secretary of the territory of Arizona, and thereafter, on the 15th day of August, 1901, there was filed in the office of said secretary of the territory of Arizona an agreement between E. D. Kenna, Byron L. Smith and James H. Eckles, and the plaintiff herein wherein and whereby said E. D. Kenna, Byron L. Smith and James H. Eckles agreed to transfer to this plaintiff all of the
6 property of said Santa Fe and Grand Canyon Company theretofore conveyed to them pursuant to the aforesaid decree of foreclosure and order of sale by E. B. Gage, special master appointed by this court in said action of Thomas Bassford against the Santa Fe and Grand Canyon Railroad Company, et al., and that pursuant to said agreement said E. D. Kenna, Byron L. Smith and James H. Eckles did, by deed of conveyance dated August 15, 1901, and recorded in book 13 of deeds at page 508 thereof, records of said Coconino county, grant and convey unto the plaintiff herein all of the property theretofore conveyed to them as hereinbefore set forth

by deed from E. B. Gage, special master, said property being in said deed described as follows, viz:

"All rights, franchises, privileges of every kind, nature or description, including all exemptions from taxation, owned or possessed by the Santa Fe and Grand Canyon Railroad Company, or which it, or its assigns, may, or can hereafter acquire, own or possess, through or under the charter of said railroad company (save and except only its rights to be a corporation) or any act of Congress of the United States, together with all other property, either real, personal or mixed, including all right, title and interest in and to its located right of way from the town of Williams, in Coconino county, territory of Arizona, to the rim of the Grand Canyon of the Colorado, in said county and territory, together with all its rights of way for any and all branch lines, also including all grades, railroad tracks, switches, turnouts, buildings, rolling stock, locomotives, telegraph poles and lines, telephone poles and lines,
7 located or situated upon such right of way, or appurtenances contiguous to it, and such other property, if any there be, of every kind, nature and description, in or to which said railroad company has any interests, together with all and singular the tenements, hereditaments and appurtenances belonging or otherwise appertaining to any of the right of way, or other premises and property above mentioned or described. The right of way referred to begins at the town of Williams, in Coconino county, territory of Arizona, and runs thence northerly to the rim of the Grand canyon, with a line for a branch railroad, running from Anita Junction to Anita mine, a distance of about two and three-quarters (2¾) miles; this right of way being a strip of land 200 feet in width, having constructed upon it, and as a part thereof, sixty-three and three-quarters (63¾) miles of spur or branch line to the Anita mine, together with six miles of grade; also all and singular the appurtenances, tenements and hereditaments belonging or appertaining thereto, including all rights acquired, or partially acquired, under the acts of Congress of the United States, approved March 3, 1875, and May 18, 1898.

Together with all the rights, title and interest of the parties of the first part hereto in and to and *and* other property, real, personal or mixed, of every kind and description, and all franchises, rights, powers, benefits, privileges, or advantages, which they have acquired or to which they are in any manner entitled under or by virtue of said deed executed by said special master and others as aforesaid, or under or by virtue of the said several decrees of said court, including all right, title, interest, claim and demand of said
8 parties of the first part in or to the rents, profits and issues of said railroad, property, franchises and rights since the same were conveyed to the parties of the first part aforesaid."

X.

That thereafter, on the 12th day of September, 1901, plaintiff herein completed said road, which was commenced by the Santa Fe and Grand Canyon Railroad company, to a point at or near the

rim of the Grand Canyon of the Colorado river, and on the 8th day of November, 1901, filed in the office of the secretary of the territory of Arizona a map showing the portion of said road constructed during the year ending October 22, 1901, which portion amounted to ten and seven-hundredths (10.07) miles. That during the month of September, 1901, R. B. Burns, chief engineer of the plaintiff corporations, made a preliminary survey of station grounds at the terminus of said road at or near the rim of the Grand Canyon of the Colorado river, and thereafter prepared and executed maps showing the location of said station grounds, which said maps were thereafter filed in the United States land office at Prescott, Arizona, and subsequently approved by the secretary of the interior on the 18th day of August, 1905.

XI.

That in order properly to conduct its business as a carrier of passengers it was and is necessary for the plaintiff to have and maintain near the terminus of its said road at the rim of the Grand Canyon hotels for the accommodation of travelers coming over its said road to visit said canyon; and for that purpose the plaintiff has erected and maintained and does now maintain and conduct
9 two certain hotels upon its station grounds at said terminus, one known as El Tovar and the other as Bright Angel, together with an electric light and power plant to supply light, heat and power to said hotels and to its depot or station and other building used by it in its business as a carrier at said terminus, together also with necessary outbuildings used in connection with said hotels, including all the buildings and equipments and machinery and appliances hereinafter mentioned as having been assessed by the persons and in the manner hereinafter particularly described.

XII.

That said Santa Fe and Grand Canyon Railroad company and plaintiff, as the successor and assign of said Grand Canyon Railroad Company, have in all respects performed and complied with the terms and provisions of said Act No. 68 of the 19th Legislative Assembly, approved March 16, 1899.

XIII.

That between the first Monday in February and the first Monday in June, in the year 1906 B. A. Cameron, the then duly appointed, qualified and acting assessor of defendant Coconino county placed upon the assessment roll of said county said Hotel El Tovar, and buildings used in connection therewith, and other property belonging to the plaintiff, and listed and assessed the same against the plaintiff in a book furnished him by the board of supervisors of defendant Coconino county, and that a full, true and correct copy of the assessment so placed against the property of plaintiff, as the same appears upon the assessment roll of defendant Coconino
10 county for the year 1906, at page 48 thereof, is hereunto attached, marked exhibit "B," and by reference made a part hereof as fully as though completely set forth herein.

XIV.

That said Hotel El Tovar, together with all buildings and structures used in connection therewith, including the laundry, engines, curio buildings, electric light and ice plants and machinery, and said Bright Angel Hotel, together with the necessary buildings and other property and structures used in connection therewith, are appurtenant to, and in a part of the station grounds of plaintiff and necessary in the use and operation of the railway operated and maintained by plaintiff as a common carrier of passengers, and for that reason could be assessed, if at all, only by the territorial Board of Equalization of the territory of Arizona, and that, therefore, the pretended assessment so sought to be levied upon and placed against said property of plaintiff by said B. A. Cameron was and is null, void and of no effect.

XV.

That at the meeting of the Territorial Board of Equalization of the territory of Arizona held in Phoenix, Arizona, on or about the 4th day of June, 1906, said Territorial Board of Equalization did, against the protest of the plaintiff, which, by its legal representatives and pursuant to notice from said board, had appeared before said board at its June meeting to show cause why its property should not be assessed, place an assessment against the property of plaintiff in words and figures as follows:

"The Grand Canyon Railway Company.

11 "Description of Property.

"Franchise and right of way and 66.45 miles of main track and roadbed, together with bridges and culverts, said main track running from Williams, in Coconino county, Arizona, through Coconino county to Grand Canyon, with a branch line to Anita and known as the property of The Grand Canyon Railway Company, at a valuation of $4454.8532 per mile.....	$296,025.00
Structures, etc., at Grand Canyon, Valle, Anita, Apex, Prado, Red Lake.....	3,000.00
Total valuation.....	$299,025.00"

That a statement of said assessment so placed against the property of plaintiff by said Territorial Board of Equalization was transmitted by said Territorial Board of Equalization to the Board of Supervisors of Coconino county pursuant to the provisions of section 3858 of the Revised Statutes of Arizona of 1901, a full, true and correct copy whereof is hereunto attached, marked exhibit "A," and by reference made a part hereof as fully as though completely set forth herein; that the Board of Supervisors of defendant Coconino county thereafter caused the county assessor of said county to enter said statement so transmitted by the Territorial Board of Equalization with said description of plaintiff's property upon the

assessment roll of said county under the proper heads therefor with the total value of said property carried out, and that said Board of Supervisors of Coconino county at its first meeting after said
12 statement was received, put, made and caused to be entered upon its minutes an order stating and declaring the length of the main track and the assessed value of the plaintiff's railway lying in each municipal corporation of said county, through which said railway runs, as fixed by said Territorial Board of Equalization, and that the clerk of said Board of Supervisors thereafter transmitted a copy of said order to the City Council or the Trustees of said municipal corporations, and that a copy of said assessment so placed against the property of this plaintiff, as the same now appears upon the assessment roll of Coconino county, is hereunto attached, marked exhibit "C," and made a part hereof as fully as though completely set forth herein.

XVI.

That plaintiff was not satisfied with the said assessment of its property by the Territorial Board of Equalization and appeared before said Board of Equalization at its August meeting held in Phoenix, Arizona, August 13, 1906, and showed said board why such assessment should be changed by cancelling same, and at said August meeting of said board plaintiff filed a written protest against such assessment, a copy of which is hereunto attached, marked exhibit "D," and made a part hereof as fully as though set forth completely herein.

XVII.

That the pretended assessment sought to be levied upon and placed against the property of plaintiff by said Territorial Board of Equalization and by said Board of Supervisors of Coconino county was and is null, void and of no effect for the reason that the plaintiff
13 has done and performed each and every act and thing required of it by the terms and provisions of Act No. 68 of the 20th Legislative Assembly of the territory of Arizona, approved March 16, 1899.

XVIII.

That if the defendants be not restrained they will immediately, and before the plaintiff can give notice of and secure a hearing on a motion for the temporary injunction herein prayed for proceed in the manner *injunction herein prayed for proceed in the manner* provided by law for the collection of said taxes claimed to be due under said and each of said pretended assessments upon said property of the plaintiff and the property used in connection therewith, and that any proceedings had or taken towards the collection of any taxes claimed to be due under and by virtue of said pretended assessments or either of them will constitute and become an apparent cloud upon plaintiff's title to the property against which said pretended assessments have been levied and placed as aforesaid, and may cause a multiplicity of suits and will cause the plaintiff irreparable injury and damage, for which there is no adequate, plain or speedy remedy at law.

Wherefore, plaintiff prays the judgment and decree of this court:

1. That, until the further order of this court, the defendants and each of them and the agents, servants, employés, deputies and officers of said and each of said defendants be enjoined and restrained from doing any act or thing or taking any steps or proceeding towards the collection of any of the taxes claimed to be due
14 under and by virtue of the pretended assessment or either of them hereinbefore described upon the property hereinbefore described or any part thereof, and from doing any act or thing to interfere with the free use, enjoyment and possession of said or any of said property by the plaintiff;

2. That pending the hearing of this action a temporary injunction be issued to prevent the defendants and each of them and their and each of their agents, servants, employés, deputies and officers from doing any act or thing or taking any steps or proceedings towards the collection of any of the taxes claimed by them to be due under and by virtue of the pretended assessments or either of them hereinbefore and in the exhibits attached hereto described, or from doing any act or thing to interfere with the free use, enjoyment and possession by the plaintiff of the property described in said assessments or any part thereof;

3. That up on the final hearing of this action said temporary injunction be made permanent;

4. That said and each of said pretended assessments so sought to be placed against plaintiff's property be declared null, void and of no effect, and that the cancellation of said and each of said pretended assessments be ordered and directed by this court;

5. That plaintiff have such other and further relief as to the court may seem equitable;

6. That plaintiff have and recover its costs and disbursements herein.

T. J. NORTON,
PAUL BURKS,
Attorneys for Plaintiff.

(Duly verified.)

15 EXHIBIT A.

Territorial Board of Equalization of Arizona.

PHOENIX, ARIZONA, *June* 15, 1906.

To the Hon. Board of Supervisors, Coconino County, Arizona:

GENTLEMEN: In accordance with paragraph 3858, section 28, title LXII, chapter 3, Revised Statues of Arizona, of 1901, please find herewith a statement of the assessment of the property of The Grand Canyon Railway Company, in your county for the current year, 190–, as made by the Territorial Board of Equalization of Arizona:

EXHIBIT B.

48. Duplicate Assessment Roll of Coconino County. Arizona Territory for the Year 1906.

Name of Taxpayer	Description of Personal Property	Description of Lands						Value of Real Estate	Value of Improvements on Real Estate	Tax on Real Estate and Improvements	Value of Personal Property	Tax on Personal Property
		Sec	Tp	Rge	No. of acres	Lot	Blk					
The Grand Canyon Ry Co	Improved property belonging to the Grand Canyon Ry Co located at Grand Canyon in Coconino county, Arizona described as follows: Land upon which stands El Tovar including Laundry Engine and Curio buildings, also ice plant, dormitory elect Light Plant and machinery								174000.00	62.50		
	The land upon which stands bright angel hotel including tents stables, etc.							2000.00 500.	3500.00	4437.50		

16a

Territory for the Year 1906. 48.

on	Tax on Real Estate and Improvements	Value of Personal Property	Tax on Personal Property	Total Taxes	Int on School Bonds Dist No. 1	Penalties	Total	Remarks
)	62.50			62.50			62.50	
)	4437.50			4437.50			4437.50	

EXHIBIT C.

49. Delinquent Assessment Roll, Coconino County.

Name of Taxpayer	Description of Personal property.	Description of Lands.						Value of Real Estate	Value of Improvements on Real Estate	Re... In...
		Sec.	Twp.	Rge.	No. of Acres	Lot	Block			
The Grand Canyon Railway Co Grand Canyon, Arizona		Franchise and right of way and 66.45 miles of main track and road-bed with the side track, ties, fish plates, bolts and any and all material used in the construction and maintenance of said track and road bed together with the bridges and culverts. Said main track running through Coconino County from Williams, in Coconino County to Grand Canyon at a valuation of $4,454 8552 per mile.* Improvements on said right of way and station grounds, being the permanent buildings and structures placed thereon and attached thereto and known in each and every instance as the improvements of the aforesaid railroad company and more particularly located and described as follows, to wit: Grand Canyon, Valle, Anita, Apex, Prado, Red Lake.							
the total length of the main track of the said Grand Canyon Railway Company in your county is 66.45 miles and the assessed value per mile of the same is fixed by a prorate distribution per mile of the assessed value of the whole property of said Company in the territory of Arizona is $4,500.00.										

Arizona Territory, for the Year 1901.

...on ...e	Tax on Real Estate and Improvements	Value of Personal Property	Tax on Personal Property	Total Taxes	Interest on School Bonds		Penalties	Total	Remarks
					District No. 1.	District No. 2.			
...side ...inte- ...rack ...n at ...tion ...reto ...com- ...alle,								7475.63	"In accordance with Paragraph 3858 Sec 28 title LXII Chapter 3 Revised Statues of Arizona assessed by the territorial Board of Equalization of Arizona and entered on this Roll by the assessor by order of the Board of Supervisors of Coconino County Arizona July 2nd 1906. B. A. Cameron, Assessor."
		*296025.00	7400.63						
		3000	75.00	7475.63					

Name of Company:

The Grand Canyon Railway Company.

Description of Property.

Franchise and right of way and 66.45 miles of main track and roadbed, with the side track, ties, fish plates, bolts and any and all materials used in the construction and maintenance of said track and roadbed, together with the bridges and culverts. Said main track running from Williams, in Coconino county, Arizona, through Coconino county to Grand Canyon, with a *a* branch line to Anita, and known as the property of The Grand Canyon Railway Company, at a valuation of $4,454.8532 per mile	$296,025.00
Improvements on said right of way and station grounds, being the permanent buildings and 16 structures placed thereon and attached thereto, and known in each and every instance as the improvements of the aforesaid railroad company, and more particularly located and described as follows, to-wit: Grand Canyon, Valle, Anita, Apex, Prado, Red Lake	3,000.00
Total valuation.....	$299,025.00

Recapitulation.

The total length of the main track of the said The Grand Canyon Railway Company in your county is 66.45 miles, and the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole property of the company in the territory of Arizona, is $4,500.00.

(Signed) JOHN H. PAGE, *Chairman.*

Attest:

F. A. TRITLE, JR., *Secretary.*

(Here follow folders, marked pp. 16*a* and 16*b*.)

17 EXHIBIT D.

To the Honorable the Territorial Board of Equalization of Arizona, Phoenix, Arizona:

GENTLEMEN: The undersigned, The Grand Canyon Railway Company, a corporation organized and existing under the laws of the territory of Arizona, respectfully submits that the action of your Honorable Body, at your meeting held in Phoenix, commencing June 4, 1906, whereby you attempted, under the provisions of section 3859, R. S. Ariz., '01, to assess the Grand Canyon Railway for the purposes of taxation, and your action thereafter in transmitting to the Board of Supervisors of Coconino county a statement of such assessment was contrary to law, for the following reasons:

1. That is appears that the Santa Fe & Grand Canyon Railroad Company, and its successor in interest, the Grand Canyon Railway Company, have done and performed all of the acts and things required under the provisions of Act No. 68 of the laws of Arizona of 1899 to be done and performed in order to entitle The Grand Canyon Railway Company to exemption of its property from taxation; and that the performance by the Santa Fe & Grand Canyon Railroad Company and The Grand Canyon Railway Company of all of the acts and things required to be done by the provisions of said Act 68 entitles The Grand Canyon Railway Company to an exemption of its property from taxation for a period of ten years from and after March 16, 1899.

2. That the right to exemption of the property of said The
18 Grand Canyon Railway Company from taxation which was initiated by the Santa Fe & Grand Canyon Railroad Company was not a personal right or privilege belonging only to the said Santa Fe & Grand Canyon Railroad Company, but that said right attached to said railroad property by virtue of the terms of section 1 of said Act No. 68 and passed to and inured to the benefit of any and all persons or corporations who should own and operate said Grand Canyon Railway within the next ten years after the passage of the act, notwithstanding the provisions of section 8, of Act No. 3 of the laws of Arizona of 1897.

3. That while section 8 of Act No. 3 of the Session Laws of Arizona of 1897 provided that nothing in that act should be construed "to give any corporation created under it" any exemption from taxation under existing or future laws of the territory of Arizona, such act could not and does not deprive The Grand Canyon Railway Company from enjoying the benefits of an exemption from taxation, the right to which was initiated and perfected under the provisions of and pursuant to subsequent legislative enactment.

Wherefore, we respectfully request that you strike said property of The Grand Canyon Railroad Company from the assessment roll and instruct the Board of Supervisors of Coconino County to dis-

regard, vacate and set aside the statement of such assessment transmitted to it by your body.

Dated at Prescott, Arizona, August 11, 1906.

THE GRAND CANYON RAILWAY COMPANY,
By T. J. NORTON,
L. H. CHALMERS AND
PAUL BURKS,
Its Attorneys.

Filed December 7, 1906.

19 [Title of Court and Cause.]

Amendment to Complaint.

Now comes the plaintiff and by leave of the court first had and obtained, amends the first paragraph of its complaint in the above entitled action, so that the same shall read as follows:

I.

That the plaintiff is now and ever since the 10th day of August, 1901, has been a railway corporation of the territory of Arizona, duly organized and existing under an- by virtue of certain articles of incorporation filed in the office of the secretary of the said territory, on the 10th day of August, A. D. 1901, of which said articles the following is a copy:

Certificate of Incorporation of the Grand Canyon Railway Company.

Whereas, the Santa Fe and Grand Canyon Railroad Company was duly incorporated by articles filed with the secretary of Arizona on or about July 31st, 1897, under the laws of the territory of Arizona, to construct, operate and maintain a railroad from the town of Williams, in Coconino county, territory of Arizona, in a northerly direction to the Bright Angel Trail and Indian Garden, at the Grand Cañon of the Colorado River, a distance of about seventy-one (71) miles; and

Whereas, afterwards on the 1st day of January, 1898, said The Santa Fe and Grand Canyon Railroad Company executed its certain mortgage or deed of trust to The International Trust Company of Boston, Massachusetts, as trustee, to secure the bonds of said

20 The Santa Fe and Grand Canyon Railroad Company, issued under and pursuant to said mortgage or deed of trust, and conveyed to said The International Trust Company, as trustee, all of its railroad, constructed, and to be constructed, and all franchises, rights, privileges, immunities, and exemptions, then or thereafter pertaining to said railroad; and

Whereas, before the completion of said railroad, the said The Santa Fe and Grand Canyon Railroad Company permitted certain liens of contractors to attach to the railroad as constructed and to remain unpaid and unsatisfied; and

Whereas, afterwards on June 8th, A. D. 1901, at the April A. D. 1901 term of the District Court of Coconino county, territory of Arizona, a judgment and decree was entered in a certain cause therein pending wherein Thomas Bassford was plaintiff and The Santa Fe and Grand Canyon Railroad Company, a corporation; the Tusayan Development Company, a corporation; The Canyon Construction Company, a corporation; The International Trust Company, a corporation; trustee; Lombard, Goode and Company, a corporation; L. W. Goode, Hattie N. Goode, Saginaw and Manistee Lumber Company, a corporation; The J. M. Dennis Lumber Company, a corporation; Union Hardware Metal Company, a corporation; S. S. and C. E. Derbyshire, a corporation, doing business under the firm name and style of Derbyshire & Derbyshire; E. J. Post and Charles E. Meyers, a co-partnership, doing business under the firm name and style of E. J. Post and Company; A. and F. O. Polson, a co-
21 partnership, doing business under the firm name of Polson Brothers; The Arizona Central Bank, a corporation; Max Salaman, George W. Martin, J. W. Thurber, R. R. Coleman, J. H. Richards, John Hurley, James Donahue, H. E. Brooks and J. B. Jones, were defendants, which cause was instituted to foreclose a mechanic's lien upon said railroad, and in which cause said The International Trust Company filed a cross-complaint to foreclose the aforesaid mortgage or deed of trust, and in which cause other of said defendants filed cross-complaints to foreclose certain mechanic's liens upon said railroad; and

Whereas, in pursuance of said judgment or decree there was sold, upon the 18th day of July, A. D. 1901, to Edward D. Kenna, Byron L. Smith and James H. Eckles, all of the city of Chicago, Illinois, as joint tenants and not as tenants in common, the following described property of The Santa Fe and Grand Canyon Railroad Company, to-wit:

The rights, franchises, privileges of every kind, nature or description, including all exemptions from taxation, owned or possessed by the defendant, The Santa Fe and Grand Canyon Railroad Company, of which it or its assigns, may or can hereafter acquire, own or possess, through or under the charter of said Railroad Company, (save and except only its right to be a corporation), or any act of Congress of the United States, together with all other property, either real, personal or mixed, including all right, title and interest, in and to its located right of way from the town of Williams, in Coconino county, territory of Arizona, to the rim of the Grand Canyon
22 of the Colorado, in said county and territory, together with all its rights of way for any and all branch lines; also including all grades, railroad tracks, switches, turnouts, buildings, rolling stock, locomotives, telegraph poles and lines, telephone poles and lines, located or situated upon such right of way, or appurtenances contiguous to it; and other property, if any there be, of every kind, nature and description, in or to which said railroad has any interests, together with all and singular the tenements, hereditaments, and appurtenances belonging or otherwise appertaining to any of the right of way or other premises and prop-

erty above mentioned or described. The right of way referred to, begins at the town of Williams, Coconino county, territory of Arizona, and runs thence northerly to the rim of the Grand Canyon, with a line for a branch railroad, running from Anita Junction to Anita mine, a distance of about two and three-quarters (2¾) miles; this right of way being a strip of land two hundred (200) feet in width, having constructed upon it and as a part thereof, sixty-three and three-quarters (63¾) miles of main line, and two and three-quarters (2¾) miles of spur or branch line to the Anita mine, together with six (6) miles of grade; also all and singular the appurtenances, tenements and hereditaments belonging or appertaining thereto, including all rights acquired, or partially acquired under the Acts of Congress of the United States, approved March 3, 1875, and May 18, 1898.

Whereas, said sale was made under said decree by E. B. Gage, as special master, and such sale was duly confirmed by said court on or about the 20th day of July, 1901; and,

23 Whereas, the said purchaser- and their associates, successors and assigns, under and by virtue of the laws of the territory of Arizona, in such case made and provided, did thereby become entitled to form and become a corporation with power to own, operate, exercise and enjoy the properties, franchises, rights, and immunities acquired by such purchasers; and

Whereas, the said purchasers, for the purpose of forming such corporation and investing the same with the aforesaid properties, rights, privileges, immunities, exemptions and franchises, and of completing the aforesaid railroad to the rim of the said Grand Canyon of the Colorado upon the route and right of way of said The Santa Fe and Grand Canyon Railroad Company, have associated with themselves the following named persons, viz:

Clinton N. Sterry, who is a citizen of the state of California, residing at Los Angeles; and

Thomas J. Norton, who is a citizen of the state of California, residing at Los Angeles; and

Whereas, the said purchaser- and their said associates have organized themselves and do hereby organize themselves as a new corporation as hereinafter in this certificate set forth:

Now, therefore, the undersigned, being the said purchasers and their associates, do hereby certify and state as follows:

First. The name of the new corporation formed by the undersigned is The Grand Canyon Railway Company;

Second. The purposes for which such corporation is formed are as follows:

24 To acquire, own, maintain, and operate the aforesaid railroad, sold as aforesaid, and to construct and complete the same upon the route and right of way of the said The Santa Fe and Grand Canyon Railroad Company to the Grand Canyon of the Colorado River; and also to acquire, own, use and enjoy the railroad and appurtenances, franchises, rights, privileges, immunities and exemptions, and all other properties acquired by the said purchasers at said sale as hereinbefore recited;

Third. The maximum amount of the capital stock of such corporation shall be one million, four hundred and fifty-five thousand dollars ($1,455,000), and the same shall be divided into fourteen thousand five hundred and fifty (14,550) shares of the par value of one hundred dollars ($100) each;

Of such capital stock two thousand five hundred (2500) shares, amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), shall be five per cent cumulative preferred stock, and

Twelve thousand and fifty (12050) shares, amounting in the aggregate to one million, two hundred and five thousand ($1,205,000), shall be common stock.

The holders of the preferred stock shall be entitled to cumulative dividends at the rate of five — per annum from the date of the issue of such stock before any dividend shall be paid on the common stock; and in case of dissolution or liquidation of said corporation, the holders of said preferred stock shall be entitled to receive the par amount of their stock, together with any cumulative dividends at the rate of five per cent per annum that shall have accrued
25 thereon and that shall remain unpaid before any sum shall be payable out of the company's assets to the holders of the common stock. The common stock shall be subject to such rights of the holders of the preferred stock.

Fourth. The number of its directors who shall manage the affairs of such corporation shall be seven and the names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
E. P. Ripley	Chicago, Ill.
W. R. Page	Proctor, Vermont.
Byron L. Smith	Chicago, Illinois.
James H. Eckles	Chicago, Illinois.
E. D. Kenna	Chicago, Illinois.
I. L. Hibbard	Winslow, Arizona.
R. J. Arey	Williams, Arizona.

Fifth. The term for which this corporation is to exist *in* fifty years.

Sixth. Said railway company shall not issue any preferred stock in excess of two hundred and fifty — dollars ($250,000) par value thereof as authorized by Article Third of this certificate, and shall not issue any mortgage bonds except with the consent of the holders of two-thirds of all the common stock of said railway company which then shall be outstanding.

Seventh. Previous to the time of such sale a plan or agreement was entered into in anticipation of the formation of the new corporation and such purchase was made pursuant thereto. Such plan or agreement was entered into by the said Edward D. Kenna, Byron L. Smith and James H. Eckels and certain holders of first mort-
26 gage bonds of The Santa Fe and Grand Canyon Railroad Company issued under its mortgage dated January 1, 1898, and such plan or agreement is as follows:

"Agreement, made this seventeenth day of June, 1901, between Edward D. Kenna, Byron L. Smith and James H.. Eckels (hereinafter termed the "committee,") parties of the first part, and such holders of first mortgage bonds of the Santa Fe and Grand Canyon Railroad Company issued under its mortgage, dated January 1, 1898, as shall become parties hereto in the manner hereinafter provided (such bondholders being hereinafter termed the "depositing bondholders,") parties of the second part.

Whereas, the Santa Fe and Grand Canyon Railroad Company (hereinafter termed the "Railroad Company,") a corporation of the territory of Arizona, has issued one thousand of its first mortgage five per cent twenty-year gold bonds, each for the sum of $1,000, secured by mortgage dated January 1, 1898, to International Trust Company, as trustee all of which bonds are now outstanding and unpaid; and

Whereas, the Railroad Company made default in the payment of the interest upon such bonds and is insolvent, and a receiver thereof has been appointed, and the holders of claims against said Railroad Company for materials, supplies and labor, and, also, the trustee under said mortgage of the Railroad Company have instituted proceedings for the enforcement of their claims and to obtain a judicial sale of the railroad and property of the Railroad Company; and

Whereas, the Santa Fe Pacific Railroad Company (herein-
27 after termed the "Santa Fe Pacific Company,") is the owner of $324,000 of said bonds of the Railroad Company and has expressed its willingness to enter into an agreement with the committee to deposit with it the $324,000 of bonds of the Railroad Company and to provide the sum of $15,000 on the terms hereinafter stated:

Now it is mutually agreed between the parties as follows:

I.

This agreement shall be signed by the members of the committee, and shall be delivered to D. L. Gallup, comptroller of The Atchison, Topeka and Santa Fe Railway Company, to be held by him at his office, No. 59 Cedar street, in the city of New York, for account of all the parties in interest. Any holders of such bonds (other than the $324,000 of such bonds held by the Santa Fe Pacific Company) may become parties to this agreement on or before such date as the committee may prescribe by delivering, on the terms of this agreement, to said D. L. Gallup, or to such other depositary as the committee may appoint, their bonds, with all coupons thereto belonging except coupons which matured prior to the first day of July, 1900. Depositing bondholders shall receive receipts signed by said depositary, or by any other depositary that may be designated by the committee, specifying the bonds and coupons deposited, and referring to this agreement, which receipts and all rights thereunder shall be transferable, subject to this agreement, in such manner as the committee may approve. The committee, in its discretion, may require

any depositing bondholders, at the time of such deposit, to
28 sign a copy of this agreement, and to deliver the same, to the depositary; but any depositor, by receiving any such receipt signed by the depositary, shall become a party hereto with the same effect as if he has signed this agreement. Depositing bondholders who fail to deposit their bonds on or before such date as the committee shall prescribe will not be entitled to deposit the same or to become parties to this agreement, or to share in the benefits thereof, and shall acquire no rights thereunder; but the committee, in its discretion, either generally or in special instances, may extend the time for receiving deposits and may receive deposits to a later date, and may waive any default by writing signed by a majority of the members of the committee, or by resolution.

Owners of bonds of the Railroad Company deposited with the International Trust Company for purposes of foreclosure may deposit such bonds by causing said International Trust Company to deliver the same to the depositary, who thereupon as holder of said bonds may redeposit the same with said International Trust Company in exchange for receipts therefor to be issued by said Trust Company to the depositary.

II.

The depositing bondholders request the committee to endeavor to carry out this agreement and the following plan, viz:

The railroad and property of the Railroad Company, when sold at judicial sale, shall be bid in, by or for account of the committee, which shall cause the same to be conveyed to and vested in a new railroad company, in consideration of the issue therefor of
29 $150,000 par value of the fully paid up five per cent preferred stock, and $1,205,000 par paid up five per cent preferred stock and $1,205,000 par value of the fully paid up common stock of such new railroad company. Such $150,000 of preferred stock shall be part of an authorized issue of $250,000; and such preferred stock shall entitle the holders thereof to receive cumulative dividends at the rate of five per cent per annum before any dividend shall be paid on the common stock and in case of dissolution or liquidation of the company to receive the par amount of their stock together with any cumulative dividends that shall have accrued thereon, and that shall remain unpaid, before any sum shall be payable to the holders of the common stock. Such $1,205,000 of common stock and $250,000 of preferred stock are to be the total authorized issue of the capital stock of such new railroad company.

The committee is to enter into an agreement with the Santa Fe Pacific Company, whereby the Santa Fe Pacific Company shall agree to deposit with the committee said $324,000 par value of such bonds of the Railroad Company, together with coupons thereon maturing subsequent to July 1, 1900, and from time to time to expend for the purposes hereinafter stated or to pay over to the committee sums in cash amounting in the aggregate to $150,000; and the committee is to agree with the Santa Fe Pacific Company that upon the completion of the reorganization the committee will transfer and deliver, or cause to be transferred and delivered, to the Santa Fe Pacific

Company, or upon its order, $150,000 par value of such pre-
30 ferred stock and $529,000 par value of such common stock of such new railroad company, being a majority of all the shares of the capital stock of such new railroad company. Such aggregate sum of $150,000 in cash to be expended by the Santa Fe Pacific Company or paid over to the committee shall be expended by said company or be used by the committee for the following purposes, viz:

(*a*) To complete the construction and equipment of the railroad of the Railroad Company, or to make advances to the receiver or to such new railroad company as shall be organized hereafter and become the owner of said railroad for the purpose of completing the same;

(*b*) To acquire, compromise or settle claims against the Railroad Company or said receiver;

(*c*) To pay any sums in cash required to be paid upon the acquisition of said railroad; and

(*d*) To pay any sums required to be paid for expenses or otherwise carrying out such plan, or any of the provisions of this agreement.

Any receiver's certificates or other claims of any kind that shall be acquired by the Santa Fe Railroad Company, by expenditure of any part of said aggregate sum of $150,000, shall be assigned to or upon the order of the committee, or to such new railroad company, or shall be released.

Upon completion of the reorganization the committee shall transfer and deliver, or cause to be transferred and delivered to the Santa Fe Pacific Company, or upon its order, said $150,000 par value
31 of such preferred stock and $529,000 par value of such common stock of the new railroad company, and the committee shall transfer and deliver, or cause to be transferred and delivered, to the respective holders of receipts issued to depositors of the remaining $676,000 par value of bonds of the Railroad Company, upon surrender and cancellation of such receipts, an amount of common stock of the new railroad company equal at par to the par amount of the bonds represented by such receipts respectively.

If the holder of any of such remaining $676,000 of bonds of the Railroad Company shall fail to deposit his bonds and to become a party hereto, the common stock of the new railroad company which would be delivered to such holder if he had deposited his bonds and become a party hereto, shall be turned over by the committee to the new railroad company to be held as a treasury asset.

It is understood that the aggregate of the sums in cash to be expended by the Santa Fe Pacific Company, or paid over to the committee is to be $150,000 and no more. In case more than the sum of $150,000 cash should be required for the purpose of carrying out such plan and this agreement the committee may obtain from the Santa Fe Pacific Company, or otherwise, such additional sum as may be required by selling at par any of the remaining $100,000 of the authorized issue of such preferred stock, or by charging the deposited securities and the railroad and property of the

new railroad company with the payment of such additional sum, and the committee may require the new railroad company to assume
the payment of any such additional sum, and to give its notes
32 therefor, payable not less than one year after the date of the
completion of the reorganization, and to assume any obligations incurred by the committee. All preferred stock, cash and other assets received or acquired by the committee (including the deposited bonds and all claims that shall be acquired) which shall not be required to perform such agreement with the Santa Fe Pacific Company and to make distribution among the depositing bondholders as above provided and to carry out the provisions of this plan and this agreem-*tn* shall be turned over to the new company.

The committee shall make provisions so that the new railroad company shall not issue any mortgage bonds and shall not issue any preferred stock in excess of the amount above provided for, except with the consent of the holders of two-thirds of all the common stock of the railroad company which then shall be outstanding.

The first board of directors of the new railroad company is to consist of seven directors, and the committee shall cause five persons who are to be designated by the Santa Fe Pacific Company, and two persons who are to be designated by W. H. Page and F. C. Partridge, to be chosen as such board of directors, provided such designation shall be made in writing prior to the organization of the new railroad company.

The committee, in its discretion, may carry out, or attempt to carry out, the foregoing plan through a reorganization of the Railroad Company without a judicial sale, by acquiring all the stock of the Railroad Company, by procuring the cancellation of all
its bonds and the release of all claims against it and by
33 readjusting its capitalization so as to enable the committee
to make delivery of the preferred stock and common stock as above provided to the Santa Fe Pacific Company and to depositing bondholders; and, in that event, the Railroad Company shall be deemed to be the new railroad company under the foregoing provisions of this plan.

III.

The depositing bondholders respectively authorize the committee to do all acts and things which the committee in its discretion may deem necessary for the purpose of carrying out said plan and this agreement, and each depositing bondholder for himself, but not for the others, by the deposit of his bonds, assigns and transfers the deposited bonds to the committee and the survivor and their or his successors, as joint tenants, and agrees that the committee shall be vested with all the rights and powers of owners thereof. And without limiting the foregoing general provision, it is hereby expressly declared that the committee shall be authorized to exercise every power vested in the holders of said bonds to purchase or otherwise acquire or contract for the purchase or satisfaction of any liens upon any part of the mortgages, property or any claims against said Railroad Company, and to compromise with any such lien claimants or other creditors of said Railroad Company; to take any action which

said committee may in its discretion deem proper for the purpose of obtaining, securing or perfecting the title, ownership and possession of said railroad and property of the Railroad Company or any part thereof for the purpose of expediting the reorganization or avoiding litigation; to apply for said purposes the deposited bonds and any funds raised by the committee, and to raise all necessary funds upon pledge of the deposited bonds, charging therewith the rights of depositors under this agreement and their interest in the new securities to be issued, and in general to do whatever in the opinion of the committee may be judicious or advisable for the purpose of carrying out the foregoing plan and this agreement; it being hereby expressly declared that the specification of particular powers herein shall not be construed as limiting the general powers hereby granted and that the exercise of the powers by this agreement conferred upon the committee shall be in all respects discretionary with it.

34

It is, however, expressly understood and declared that the committee shall not have any power to render any depositing bondholders personally liable for any moneys borrowed by the committee or voluntarily subject any depositing bondholder to any personal liability or obligation, but only the property which is the subject matter of this agreement may be charged with the liabilities or obligations incurred by the committee.

The amount to be bid by the committee at any foreclosure or other sale of the railroad or other property of the Railroad Company shall be entirely discretionary with the committee.

All bonds and other property deposited with or held by any depositary hereunder shall be received and held by such depositary subject to the order and control of the committee; and at any time the committee may appoint a new depositary.

The committee may organize the new company proposed to be formed, in such manner as the committee shall deem best, and may receive and vote upon the stock of such new company until the same shall be transferred to the parties entitled to receive the same hereunder.

35

This agreement is to be operative whenever $800,000 par value of such bonds of the Railroad Company, or such less amount as the committee shall deem to be sufficient, shall have been deposited hereunder. In case for any reason the committee shall determine that it has become expedient to attempt to carry out the plan, it shall return to the depositors their bonds, upon surrender of the respective receipts therefor, and shall assign and deliver or transfer and convey to the Santa Fe Pacific Company any receiver's certificates, claims or other obligations or property purchased out of any cash paid to the committee by the Santa Fe Pacific Company.

IV.

The committee may adopt its own rules of procedure and it may employ such counsel, attorneys in fact and agents as it deems necessary, may fix the compensation for their services and may make such expenditures as it shall in good faith deem necessary for the

purpose of carrying out this agreement; and it may procure the performance of any matters and things herein provided for by such agents, trustees and attorneys as it may in its discretion deem proper. The committee shall act by a majority of its members, and the action of such majority shall be binding and have the same effect as if assented to by the full committee. Two members shall con-
36 stitute such majority. Any such action may be taken at a meeting at which a majority of the committee shall be present in person or by proxy; or any action may be taken without a meeting provided such action be assented to or subsequently approved in writing by a majority of all the members of the committee. A record shall be kept of all acts and proceedings of the committee. Any member of the committee may resign. In case of any vacancy the remaining members of the committee by appointment in writing may appoint a new member to fill such vacancy. In like manner the committee by appointment in writing may add to its number. All right, title and powers vested in the committee shall from time to time vest in the members for the time being of the committee without any further appointment, transfer or assignment.

The committee undertakes in good faith to endeavor to carry out this plan and agreement, but the members of the committee assume no personal responsibility for the execution thereof. No member shall be liable in any case for the acts of the other members or of the depositary, nor for the acts of any attorneys, trustees or agents selected in good faith; nor shall any member be personally liable for any error of judgment or mistake of law, but each shall be liable only for his own willful malfeasance.

Present or future members of the committee may be pecuniarily interested in said bonds and in the matters which are subject of this agreement.

The accounts of the committee shall be filed with the new railroad company and when approved by its board of directors the committee shall be discharged.

37 In witness whereof, said committee has caused this agreement to be signed the day and year first above written, and the depositors of bonds have accepted receipts issued by the depositary as hereinbefore provided.

EDWARD D. KENNA,
BYRON L. SMITH,
JAMES H. ECKLES,
Committee."

In witness whereof, we, the undersigned, being said purchasers and their associates, have hereunto severally subscribed our names and affixed our seals this 30th day of July, A. D. 1901.

EDWARD D. KENNA. [SEAL.]
BYRON L. SMITH. [SEAL.]
JAMES H. ECKELS. [SEAL.]
C. N. STERRY. [SEAL.]
THOMAS J. NORTON. [SEAL.]

Approved:
FRANCIS T. A. JUNKIN,
Counsel to Committee.

STATE OF ILLINOIS,
County of Cook, ss:

Before me, Edward J. Engel, a notary public in and for said county and state, on this day, personally appeared Edward D. Kenna, Byron L. Smith, and James H. Eckels, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 30th day of July A. D. 1901.

[SEAL.] EDWARD J. ENGEL,
Notary Public, Cook County, Illinois.

38 My commission expires April 17, 1905.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Before me, J. L. B. Hamilton, a notary public in and for said county and state, on this day, personally appeared Clinton N. Sterry, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 7th day of August A. D. 1901.

[SEAL.] J. L. B. HAMILTON,
Notary Public, Los Angeles County, California.

My commission expires June 23, 1903.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Before me, John J. Deane, a notary public in and for said city and county and state, on this day, personally appeared Thomas J. Norton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 5th day of August, A. D. 1901.

[SEAL.] JOHN J. DEANE,
Notary Public, City and County of San Francisco, State of California.

My commission expires September 24, 1904.

T. J. NORTON,
U. T. CLOTFELTER,
PAUL BURKS,
Attorneys for Plaintiff.

Filed September 21, 1907.

39 [Title of Court and Cause.]

ANSWER OF DEFENDANTS.

I.

Motion.

Come now the above named defendants and show unto the court that in the plaintiff's complaint herein two separate and independent causes of action are improperly united and pleaded as one cause of action, in this, that the Grand Canyon Railway, described in plaintiff's complaint, was assessed and the assessment thereof was equalized by the Territorial Board of Equalization and, in this, that the hotel buildings described in the said complaint were assessed by the county assessor of Coconino county, in the territory of Arizona, and the assessment thereof was equalized by the County Board of Equalizations of Coconino county, and in this, that the said properties are different in their character and subject to different methods of assessment by law.

Wherefore, defendants move the court to require the plaintiff to separately state and number its said causes of action.

HENRY F. ASHURST,
As District Attorney of Coconino County,
Attorney for Defendants.
E. S. CLARK,
Attorney General.
EDWARD M. DOE,
Attorneys for Defendants.

II.

Demurrer.

Come now the defendants above named, by and through Henry F. Ashurst, the, and as the District Attorney of the County
40 of Coconino, Territory of Arizona, and for cause of demurrer allege: That the said complaint of Plaintiff herein does not state facts sufficient to constitute a cause of action.

Wherefore, defendants pray judgment as to the sufficiency of said complaint, and for their costs herein.

HENRY F. ASHURST,
As District Attorney, Coconino County, Ariz.,
Attorney for Defendants.
E. S. CLARK,
Attorney General,
EDWARD M. DOE,
Attorneys for Defendants.

III.

In Denial.

For a further and separate defense to the plaintiff's complaint on file herein, defendants allege and deny as follows:

1. Defendants, upon information and belief, deny that the plaintiff herein is now, or ever since the 10th day of August, 1901, or at any other time, or at all, has been a railway, or other corporation, duly, or at all organized or existing under or by virtue of the laws of the territory of Arizona, or any other laws.

2. Defendants admit all of paragraph two of plaintiff's complaint on file herein.

3. Defendants, upon information and belief, deny that the Santa Fe & Grand Canyon Railroad Company, or any other company, predecessor in interest, or otherwise to certain or any property rights of the plaintiff herein, was a corporation, duly or at all organized or existing under or by virtue of the laws of the territory of Arizona, or otherwise, or that the said Santa Fe & Grand Canyon
41 Railroad Company, or any other company, by its or any articles of incorporation, duly, or at all, filed in the office of the secretary of the territory of Arizona, or elsewhere was authorized or empowered, amongst any or other things, to construct, operate and maintain any railroad from any point near Williams northerly in said county of Coconino, territory of Arizona or otherwise, or at all, to any point on the rim of the Grand Canyon, or elsewhere, or in Coconino county, or that the plaintiff herein, the Grand Canyon Railway Company, or any railroad company, by its or any articles of incorporation, or otherwise, was authorized or empowered, amongst other things, to construct, operate, or maintain the same road, or any road.

4. Defendants are informed and believe, and upon information and belief, deny that on August 10th, 1899, or upon any other date or at all, the Santa Fe & Grand Canyon Railroad Company, duly, or at all, executed, or thereafter, on the 19th day of August, 1899, or upon any other date or at all, filed with the secretary of the territory of Arizona, or with any officer, a statement in writing setting forth the general, or any, course, or the terminal or any points of the railroad proposed to be constructed by plaintiff, or any other railroad company, or therein or thereby stated, amongst other things, that plaintiff proposed to construct a railroad, from a point near Williams, or elsewhere, northerly, or in any direction, in Coconino county, or elsewhere, to a point on the rim of the Grand Canyon, or elsewhere, or that the terminal or any points of said or any rail-
road, were, a point at or near Williams, or elsewhere, or at a
42 point on or near the rim of the Grand Canyon, northerly from Williams, or elsewhere, or both, or either, in Coconino county, or any other place; and defendants deny that said or any statement was, is, or ever has been filed in pursuance of the provisions of Act 68 of the 19th Legislative Assembly, approved March 16th, 1899, or filed said statement in pursuance of any other Act of any Legis-

lative Assembly of Arizona, or at all; and the defendants are informed and believe and upon such information and belief allege, that if any statement of the purport referred to in paragraph four of plaintiff's complaint on file herein, was filed, that the same was wholly inadequate, insufficient in law and void.

5. Defendants, upon information and belief, deny that on the 7th day of October, 1899, or upon any other date or at all, the board of directors of the Santa Fe & Grand Canyon Railroad Company, or any board of directors, or any one, duly, or at all, adopted the, or any survey, or location of said or any proposed railroad theretofore or at all made, or that on the 22nd day of October, 1899, or upon any other date, commenced, in good faith, or otherwise, the construction of said road , or any road, or thereafter on the 30th day of October, 1899, or at any other time or at all, filed with the secretary of the territory of Arizona, or elsewhere, any statement showing the amount of said or any road, which had been constructed, or otherwise; and defendants, upon information and belief, allege that if any statement of the purport referred to in paragraph five of plaintiff's complaint herein, was filed, that the same was wholly inadequate, insufficient in law and void.

43 6. Defendants are informed and believe, and upon such information and belief, deny that on the 22nd day of December, 1900, or upon any other date or at all, the Santa Fe & Grand Canyon Railroad Company, or any one, filed with the secretary of the territory of Arizona, or elsewhere, any map showing the railroad constructed by it, or otherwise, during the year ending October 22nd, 1900, or any other date, amounting to fifty-six and thirty-four one-hundredths miles, or any other number of miles.

7. Defendants upon information and belief, deny that on June 8th, 1901, or at any other time or at all, a decree of foreclosure of, or order of sale, was made or entered by the above, or any, court, in any action brought by Thomas Bassford, or any other person, against the Santa Fe & Grand Canyon Railroad Company et al., or any other railroad company, either in action number five hundred and twelve or otherwise, wherein or whereby, this or any court directed the sale of all, or any, rights, franchises, or privileges of every nature, kind or description, or any exemptions from taxation owned or possessed by the plaintiff railroad company, or any railroad company which it, or its assigns, may or can hereafter acquire, own or possess through or under the, or any charter of the said or any railroad company, or that thereafter, or pursuant to said or any decree of foreclosure, or order of sale, on the 18th day of July, 1901, or at any other time, there was sold to E. D. Kenna, Byron L. Smith or James H. Eckels, or any other persons, all of the said property, or any property of the said Santa Fe & Grand Canyon Railroad Company, or any

44 railroad company, or including any or all exemptions from taxation owned or possessed by the plaintiff railroad company, or any railroad company, or which it, or its assigns, may or can hereafter acquire, own or possess through or under the charter of said railroad company.

8. Defendants, upon information and belief deny that on the 20th

day of July, 1901, or at any other time or at all, there was entered or filed in the said action number five hundred and twelve, or any other action, a decree of any court confirming the, or any, sale made by E. B. Gage, or any other person, as special master or otherwise, to E. D. Kenna, Byron L. Smith or James H. Eckels, or any other person, or said E. B. Gage or any other person, receiver or special master or otherwise, was, by said or any degree of confirmation, authorized or directed to turn said, or any property, over to said or any purchasers.

9. Defendants, upon information and belief, deny that on the 30th day of July, 1901, or at any other time, the, or any articles of incorporation of the Grand Canyon Railway Company, or any company, were duly or at all, executed or were, on the 10th day of August, 1901, or at any other time or at all, duly, or at all, filed in the office of the secretary of the territory of Arizona, or elsewhere, or thereafter, on the 15th day of August, 1901, or at any other time, there was filed in the office of the secretary of the territory of Arizona, or elsewhere, any agreement between E. D. Kenna, Byron L. Smith or James H. Eckels, or any other person, or the plaintiff herein, wherein or whereby said Kenna, Smith or Eckels, or any other persons, agreed to transfer to this plaintiff or any other person,
45 all or any part of the, or any, property of the said Santa Fe & Grand Canyon Railroad Company, or any other company, theretofore or at all conveyed to them, or any other persons, pursuant to any decree of foreclosure, or order of sale, by said Gage, or any other person, as special master, or otherwise, empowered by this, or any, court in the said action of said Thomas Bassford, or any other person, against the Santa Fe & Grand Canyon Railroad Company, et al., or any other persons, or that, pursuant to the said, or any, agreement said Kenna, Smith or Eckels, or any other persons, did, by deed of conveyance, or otherwise, dated August 15th, 1901, or at any other time or at all, and recorded in book 13 of deeds, records of Coconino county, at page 508, or at any other place or book or page, grant or convey unto the plaintiff herein, or any other persons, all, or any, of the property theretofore or at all conveyed to them, or to any other persons; and the defendants herein expressly deny that the said deed, mentioned in paragraph 9 of the plaintiff's complaint herein, or any deed, operated to convey to, or vest in, the said plaintiff, or any one, any exemption from taxation of any kind, nature or description whatever, as mentioned in the plaintiff's complaint herein, or otherwise.

10. Defendants, upon information and belief, deny that on the 12th day of September, 1901, or at any other time, plaintiff herein completed said, or any road, which was commenced by the Santa Fe & Grand Canyon Railroad Company, or any other company, or person, to any point at or near the rim of the Grand Canyon of the Colorado River, or elsewhere, or, on the 8th day of Novem-
46 ber, 1901, or at all, filed in the office of the secretary of the territory of Arizona, any map showing any portion of any road constructed during the year ending October 22nd, 1901, or at all, or which portion amounted to ten and seven one-hundredths

miles, or any other number of miles, or that during the month of September, 1901, or at any other time or at all, R. B. Burns, chief engineer of the plaintiff corporation, or any one, or otherwise, made a preliminary or other survey of the, or any, station grounds at the terminus of the said railroad at or near the rim of the Grand Canyon of the Colorado river, or elsewhere, or thereafter, or at all, plaintiff prepared or executed, any map or maps showing the, or any, location of said, or any, station grounds, or otherwise, and deny that said or any map or maps were thereafter, or at all, filed in the office of the United States land office at Prescott, Arizona, or elsewhere, or subsequently, or at all, were approved by the Secretary of the Interior, or any other official of the United States, on the 18th day of August, 1905, or upon any other date or at all.

11. Answering paragraph eleven of plaintiff's complaint on file herein, defendants deny that in order properly, or otherwise, to conduct plaintiff's, or any, business, as a carrier of passengers, or otherwise, it was, or is, necessary for the plaintiff, or any one, to have or maintain or operate or run near the terminus of its said, or any, railroad, at the rim of the Grand Canyon, or elsewhere, any hotel or hotels for the accommodation of travelers, or other persons coming over plaintiff's said or any road, to visit said Grand Canyon,
47 or otherwise, or for that, or any, purpose, the plaintiff has erected or maintained, or does now, or at all maintain or conduct two certain or any hotel or hotels upon plaintiff's said station, or any, grounds, at said terminus, or elsewhere, or one known as "El Tovar," or the other known as "Bright Angel," or otherwise, or together with an electric light or power plant to supply heat, light or power, or aught else, or anything, to said hotel or hotels, or to its depot or station grounds, or other buildings whatever, used by it in its business, or otherwise, as a common carrier, or otherwise, at said terminus, or elsewhere, or together, or at all with necessary or any outbuildings; but defendants allege the fact to be, that the said alleged hotels are, and always have been, run operated, controlled, managed and maintained by one Fred Harvey (and not in any way by this plaintiff) as a means of profit to the said Fred Harvey exclusively, and that the said Fred Harvey is regularly engaged in the business of conducting and operating hotels.

12. Defendants are informed and believe and, upon such information and belief, deny that the Santa Fe & Grand Canyon Railroad Company, or the Grand Canyon Railway Company, as its successor and assign, or otherwise, have in any way, or at all, complied with any of the provisions of Act 68 of the 19th, or any, Legislative Assembly of Arizona, approved March 16th, 1899, or any other date.

13. Defendants admit all of paragraph thirteen of the plaintiff's complaint on file herein.

14. Answering paragraph fourteen of the plaintiff's com-
48 plaint on file herein, the defendants, upon information and belief, deny that said hotel El Tovar, together with any buildings or structures used in connection therewith, including the laundry, engines, curio buildings, electric light or ice plants, or machinery, or said Bright Angel Hotel, together with the necessary, or any,

outbuildings, or other property or structures used in connection therewith, or appurtenant to, are a part of the station grounds of plaintiff, or necessary in the use or operation of the, or any, railway operated or maintained by the plaintiff, or any other company, as a common carrier of passengers, or otherwise, or for that reason, or any reason, could be assessed, if at all, only by the Territorial Board of Equalization, or that the said assessment so sought to be levied upon, or placed against the said property of this plaintiff by said B. A. Cameron was, or is, null or void, or of no effect; but allege that the said assessments and each of them are just, valid and lawful assessments, and allege that the said assessments so levied constitute a valid and subsisting tax lien against said hotels, and each of them, and that the same is wholly unpaid; and defendants deny that the said or any hotel or hotels are fixtures appurtenant to, or a part of, the station grounds of plaintiff and deny that the said, or any, hotel or hotels, are used or necessary in the operation of the railroad maintained and operated by the plaintiff herein as a common carrier of freight, passengers, or otherwise, and defendants deny that the said hotels are subject to assessment only by the Territorial Board of Equalization of the territory of Arizona, but allege the fact
49 to be, that the said hotels, and each of them, are subject to assessment by the county assessor of the county of Coconino, Arizona, and as now assessed by the said assessor of Coconino county, Arizona.

15. Answering paragraph fifteen of plaintiff's complaint on file herein, the defendants admit all of said paragraph fifteen.

16. Answering paragraph sixteen of plaintiff's complaint on file herein, defendants admit all of said paragraph, save and except, that defendants, upon information and belief, deny that this plaintiff, or any one, showed the Board of Equalization of the territory of Arizona why any assessment should be changed by cancelling the same, or otherwise.

17. Answering paragraph seventeen of the plaintiff's complaint on file herein, defendants, upon information and belief, deny that the assessment sought to be levied or placed against the property of plaintiff by the said Territorial Board of Equalization, or by the said Board of Supervisors of Coconino county, Arizona, is null or void; and defendants, upon information and belief, deny that the plaintiff has done or performed each or any act required of it by the terms of Act 68 of the 20th Legislative Assembly of the territory of Arizona, approved March 16, 1899, or otherwise; and defendants allege that the said assessment levied and placed upon the said property of the plaintiff herein by the said Territorial Board of Equalization of the Territory of Arizona is a just, valid and lawful assessment, and allege that the said assessment so levied constitutes a valid and subsisting tax lien against the said railroad property.

50 18. Answering paragraph eighteen of the plaintiff's complaint on file herein, defendants deny that any proceedings had or taken, or to be had or taken toward the collection of any taxes claimed to be due, under and by virtue of the said assessments, or either of them, will constitute or become an apparent, or other,

cloud upon the plaintiff's title to the said property, or will result in irreparable or any injury, or will cause a multiplicity of, or any, suits, or will interfere with the operation of plaintiff's said railway, or cause plaintiff or any one irreparable or any injury for which there is no adequate, plain or speedy remedy at law.

19. Defendants deny that the property mentioned in the plaintiff's complaint, to wit: said hotels and said railroad property, was, or were, at any of the time mentioned in the plaintiff's complaint, or at anytime, exempt from taxation in Coconino county, Arizona, or elsewhere, but allege the fact to be that the said hotels and each of them and all of said property mentioned in the plaintiff's complaint is now, and was, at all of the times mentioned in the plaintiff's said complaint subject to taxation.

Wherefore, defendants pray judgment that this action be dismissed, that defendants go hence without day, and that they recover their costs herein, and pray that said assessments sought to be placed against the property hereinbefore mentioned and described be declared and adjudged to be a valid assessment and subsisting tax lien against said property, and defendants pray for such
51 other and further relief as may to the court seem equitable.

HENRY F. ASHURST,
District Attorney,
E. S. CLARK,
Attorney General,
EDWARD M. DOE,
Attorneys for Defendants.

(Duly verified.)

Filed March 13, 1907.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. R. TREAT, Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendant.

Transcript of Testimony.

This cause coming on for hearing on the 22nd day of September, 1908, before the Court sitting without the aid of a jury, Hon. Richard E. Sloan, Judge, the cause was presented to the Court by counsel representing the respective parties, and the Court
52 being fully advised in the premises rendered its judgment in favor of the plaintiff.

Appearances:

U. T. Clotfelter, Esq., and Paul Burks, Esq., Attorneys for the plaintiff.

Henry F. Ashurst, District Attorney, and E. M. Doe, Esq., Attorneys for the defendant.

By Mr. CLOTFELTER: I think the most expeditious manner of procedure will be to read the complaint, paragraph by paragraph and the matters therein can be agreed upon.

By the COURT: Very well, proceed.

By Mr. CLOTFELTER: The first paragraph of the amendment to the complaint reads as follows:

That the plaintiff is now and ever since the 10th day of August, 1901, has been a railway corporation of the Territory of Arizona, duly organized and existing under and by virtue of certain articles of incorporation, filed in the office of the Secretary of the said Territory, on the 10th day of August, A. D. 1901, of which said articles the following is a copy:

[Article of Incorporation omitted by stipulation.]

By Mr. DOE: We admit that the plaintiff is now, and ever since the 10th day of August, 1901, has been a railway corporation, duly organized and existing under and by virtue of the laws of the Territory of Arizona, and that the articles of incorporation set forth in full in the first paragraph of the Amendment to the Complaint is a true copy of the articles of incorporation filed and on file with the Secretary of the Territory.

53 By Mr. CLOTFELTER: Paragraph Two of the Complaint is admitted in the pleadings, and reads as follows:

That the defendant, Thomas Devine, (now J. R. Treat) is now and ever since the 1st day of January, 1905, has been the duly elected, qualified and acting Treasurer and Ex-Officio Tax Collector in and for the County of Coconino, Territory of Arizona, and that said County of Coconino is now and at all times hereinafter mentioned has been a municipal corporation duly organized and existing under the laws of the Territory of Arizona.

By Mr. DOE: That is admitted in the pleadings.

By Mr. CLOTFELTER: Paragraph Three of the Complaint reads as follows:

That the Santa Fe and Grand Canyon Railroad Company, predecessor in interest to certain property rights of the plaintiff herein, as will more fully hereinafter appear, was a corporation duly organized and existing under and by virtue of the laws of the territory of Arizona, that said Santa Fe and Grand Canyon Railroad Company, by its articles of incorporation duly filed in the office of the secretary of Arizona, was authorized and empowered, among other things, to construct, operate and maintain a railroad from a point near Williams northerly in said county of Coconino, territory of Arizona, to a point on the rim of the Grand Canyon, also in said county and territory; that the plaintiff herein, the Grand Canyon Railway Company, by its articles of incorporation, was authorized and empowered, among other things, to construct, operate and maintain the same road.

54 By Mr. DOE: That may be conceded, admitted to be true.

By Mr. CLOTFELTER: Paragraph Four of the complaint reads as follows:

That on August 10, 1899, the said Santa Fe and Grand Canyon Railroad Company, duly executed and thereafter, on the 19th day

of August, 1899, duly filed with the secretary of the territory of Arizona, a statement in writing setting forth the general course and the terminal points of the railroad proposed to be constructed by it, and therein and thereby stated among other things that it proposed to construct a railroad from a point near Williams northerly in Coconino County to a point on the rim of the Grand Canyon northerly from Williams, both in Coconino County; and that said statement was filed in pursuance of the provisions of Act No. 68 of the 19th Legislative Assembly, approved March 16, 1899.

By Mr. DOE: I am perfectly willing to admit the incorporation and the validity of the incorporation and of the filing of the documents that were afterward filed. I don't see the occasion of saying they were under any particular law.

By Mr. CLOTFELTER: It is agreed that all the allegations of Paragraph Four are true as stated therein, except the allegation reading as follows: "And that said statement was filed in pursuance of the provisions of Act. No. 68 of the 19th Legislative Assembly, approved March 16, 1899."

By Mr. DOE: That is agreed to.

By Mr. CLOTFELTER: Paragraph Five of the Complaint reads as follows:

55 That thereafter, on the 7th day of October, 1899, the board of directors of said Santa Fe and Grand Canyon Railroad Company duly adopted the survey and location of said proposed railroad theretofore made, and on the 22nd of October, 1899, commenced, in good faith, the construction of said road; and thereafter, upon the 30th day of October, 1899, filed with the secretary of the territory of Arizona, a statement showing the amount of said road which had been constructed.

By Mr. DOE: That may be admitted.

By Mr. CLOTFELTER: Paragraph Six of the Complaint reads as follows:

That thereafter, on the 22nd day of December, 1900, said Santa Fe and Grand Canyon Railroad Company filed with the secretary of the territory of Arizona a map showing the railroad constructed by it during the year ending October 22, 1900, amounting to fifty-six and thirty-four hundredths (56.34) miles.

By Mr. DOE: Yes, that is admitted.

By Mr. CLOTFELTER: Paragraph Seven of the Complaint reads as follows:

That thereafter, on June 8, 1901, a decree of foreclosure and order of sale was made and entered by the above court in an action brought by Thomas Bassford against the said Santa Fe and Grand Canyon Railroad Company, et al., said action being No. 512, wherein and whereby this court directed the sale of all rights, franchises, privileges of whatsoever nature, kind or description, including all exemptions from taxation owned or possessed by the defendant railroad company or which it or its assigns may or can hereafter acquire, own or possess through or under the charter of

56 said railroad company, and that thereafter, pursuant to said decree of foreclosure and order of sale on the 18th day of

July, 1901, there was sold to E. D. Kenna, Byron L. Smith, and James H. Eckles all of the property of said Santa Fe and Grand Canyon Railroad company, "including all exemptions from taxation owned or possessed by the defendant railroad company or which it or its assigns may or can hereafter acquire, own or possess through or under the charter of said railroad company."

By Mr. DOE: That paragraph is conceded.

By Mr. CLOTFELTER: Paragraph Eight of the Complaint reads as follows:

That on the 20th day of July, 1901, there was entered and filed in said action No. 512 a decree of court confirming the sale made by E. B. Gage, as special master, to E. D. Kenna, Byron L. Smith and James H. Eckles, and said E. B. Gage, receiver and special master, was by said decree of confirmation authorized and directed to turn said property over to said purchasers.

By Mr. DOE: That is conceded.

By Mr. CLOTFELTER: Paragraph Nine of the Complaint reads as follows:

That on the 30th day of July, 1901, the articles of incorporation of the Grand Canyon Railway Company, plaintiff herein, were duly executed and were, on the 10th day of August, 1901, duly filed in the office of the secretary of the territory of Arizona, and thereafter, on the 15th day of August, 1901, there was filed in the office of the said secretary of the territory of Arizona, an agreement between E. D. Kenna, Byron L. Smith and James H. Eckles, and the
57 plaintiff herein wherein and whereby said E. D. Kenna, Byron L. Smith and James H. Eckles agreed to transfer to this plaintiff all of the property of said Santa Fe and Grand Canyon Railroad Company, theretofore conveyed to them pursuant to the aforesaid decree of foreclosure and order of sale by E. B. Gage, special master appointed by this court in said action of Thomas Bassford against the Santa Fe and Grand Canyon Railroad Company, et al., and that pursuant to said agreement said E. D. Kenna, Byron L. Smith and James H. Eckles did, by deed of conveyance dated August 15, 1901, and recorded in book 13 of deeds at page 508 thereof, records of said Coconino county, grant and convey unto the plaintiff herein all of the property theretofore conveyed to them as hereinbefore set forth by deed from E. B. Gage, special master, said property being in said deed described as follows, viz:

"All rights, franchises, privileges of every kind, nature or description, including all exemption from taxation, owned, or possessed by the Santa Fe and Grand Canyon Railroad Company, or which it, or its assigns, may, or can hereafter acquire, own or possess, through or under the charter of said railroad company (save and except only its rights to be a corporation), or any Act of Congress of the United States, together with all other property, either real, personal or mixed, including all right, title and interest in and to its located right of way from the town of Williams, in Coconino County, Territory of Arizona, to the rim of the Grand
58 Canyon of the Colorado, in said County and Territory, together with all of its rights of way for any and all branch lines, also including all grades, railroad tracks, switches, turnouts,

buildings, rolling stock, locomotives, telegraph poles and lines, telephone poles and lines, located or situated upon such right of way, or appurtenances contiguous to it, and such other property, if any there be, of every kind, nature and description, in or to which said Railroad Company has any interests, together with all and singular the tenements, hereditaments and appurtenances belonging or otherwise appertaining to any of the right of way, or other premises and property above mentioned or described. The right of way referred to begins at the Town of Williams in Coconino County, Territory of Arizona, and runs thence northerly to the rim of the Grand Canyon, with a line for a branch railroad, running from Anita Junction to Anita Mine, a distance of about two and three-quarters (2¾) miles; this right of way being a strip of land 200 feet in width, having constructed upon it, and as a part thereof, sixty-three and three-quarters (63¾) miles of spur or branch line to the Anita Mine, together with six miles of grade; also all and singular the appurtenances, tenements and hereditaments belonging or appertaining thereto, including all rights acquired or partially acquired,
59 under the Acts of Congress of the United States, approved March 3, 1875, and May 18, 1898.

Together with all the right, title and interest of the parties of the first part hereto in and to and all other property, real, personal and mixed of every kind and description, and all franchises, rights powers, benefits, privileges, or advantages, which they have acquired or to which they are in any manner entitled under or by virtue of said deed executed by said Special Master and others as aforesaid, or under or by virtue of the said several decrees of said Court, including all right, title, interest, claim and demand of said parties of the first part in or to the rents, profits and issues of said railroad, property, franchises and rights since the same were conveyed to the parties of the first part as aforesaid."

By Mr. DOE: That may be conceded.

By Mr. CLOTFELTER: Paragraph Ten of the Complaint reads as follows:

That thereafter, on the 12th day of September, 1901, plaintiff herein completed said road, which was commenced by the Santa Fe and Grand Canyon Railroad company, to a point at or near the rim of the Grand Canyon of the Colorado river, and on the 8th day of November, 1901, filed in the office of the secretary of the territory of Arizona a map showing the portion of said road constructed during the year ending October 22, 1901, which portion amounted to ten and seven-hundredths (10.07) miles. That during the
60 month of September, 1901, R. B. Burns, chief engineer of the plaintiff corporations, made a preliminary survey of station grounds at the terminus of said road at or near the rim of the Grand Canyon of the Colorado river, and thereafter prepared and executed maps showing the location of said station grounds, which said maps were thereafter filed in the United States land office at Prescott, Arizona, and subsequently approved by the secretary of the interior on the 18th day of August, 1905.

By Mr. DOE: The allegations in Paragraph Ten are admitted.

By Mr. CLOTFELTER: Paragraph Eleven of the Complaint reads as follows:

That in order properly to conduct its business as a carrier of passengers it was and is necessary for the plaintiff to have and maintain near the terminus of its said road at the rim of the Grand Canyon hotels for the accommodation of travelers coming over its said road to visit said canyon; and for that purpose the plaintiff has erected and maintained and does now maintain and conduct two certain hotels upon its station grounds at said terminus, one known as El Toval and the other as Bright Angel, together with an electric light and power plant to supply light, heat and power to said hotels and to its depot or station and other buildings used by it in its business as a carrier at said terminus, together also with necessary outbuildings used in connection with said hotels, including all the buildings and equipments and machinery and appliances hereinafter mentioned as having been assessed by the persons and in the manner hereinafter particularly described.

By Mr. DOE: As to Paragraph Eleven the denial set forth in the answer of the defendants stands.

61 By Mr. CLOTFELTER: Paragraph Twelve of the Complaint reads as follows:

That said Santa Fe and Grand Canyon Railroad company and plaintiff, as the successor and assign of said Santa Fe & Grand Canyon Railroad Company, have in all respects performed and complied with the terms and provisions of said Act No. 68 of the 19th Legislative Assembly, approved March 16, 1899.

By Mr. DOE: As to Paragraph Twelve, it is understood that the denial in the defendant's answer stands as stated in the answer.

Mr. CLOTFELTER: Paragraph Thirteen, I will not read, it may be considered read.

That between the first Monday in February and the first Monday in June, in the year 1906 B. A. Cameron, the then duly appointed, qualified and acting assessor of defendant Coconino county placed upon the assessment roll of said county said Hotel El Tovar, and buildings used in connection therewith, and other property belonging to the plaintiff, and listed and assessed the same against the plaintiff in a book furnished him by the board of supervisors of defendant Coconino county, and that a full, true and correct copy of the assessment so placed against the property of plaintiff, as the same appears upon the assessment roll of defendant Coconino county for the year 1906, at page 48 thereof, is hereunto attached, marked exhibit "B," and by reference made a part hereof as fully as though completely set forth herein.

By Mr. DOE: The facts as stated in Paragraph Thirteen are admitted in the answer.

By Mr. CLOTFELTER: Paragraph Fourteen I will not read. It may be considered as read.

62 That said Hotel El Tovar, together with all buildings and structures used in connection therewith, including the laundry, engines, curio buildings, electric light and ice plants and machinery, and said Bright Angel Hotel, together with the necessary

outbuildings and other property and structures used in connection therewith, are appurtenant to, and a part of the station grounds of plaintiff and necessary in the use and operation of the railway operated and maintained by plaintiff as a common carrier of passengers, and for that reason could be assessed, if at all, only by the Territorial Board of Equalization of the territory of Arizona, and that, therefore, the pretended assessment so sought to be levied upon and placed against said property of plaintiff by said B. A. Cameron was and is null, void and of no effect.

By Mr. CLOTFELTER: That paragraph in substance is that the El Tovar and other buildings are necessary to the operation of the railroad.

By Mr. DOE: That stands denied as denied in the answer.

By Mr. CLOTFELTER: Paragraph Fifteen of the Complaint is admitted in full in the defendant's answer. It reads as follows:

That at the meeting of the Territorial Board of Equalization of the territory of Arizona held in Phœnix, Arizona, on or about the 4th day of June, 1906, said Territorial Board of Equalization did, against the protest of the plaintiff, which, by its legal representatives and pursuant to notice from said board, had appeared before
63 said board at its June meeting to show cause why its property should not be assessed, place an assessment against the property of plaintiff in words and figures as follows:

"The Grand Canyon Railway Company.

"Description of Property.

"Franchise and right of way and 66.45 miles of main track and roadbed, together with bridges and culverts, said main track running from Williams, in Coconino county, Arizona, through Coconino county to Grand Canyon, with a branch line to Anita and known as the property of The Grand Canyon Railway Company at a valuation of $4454.8532 per mile	$296,025.00
Structures, etc., at Grand Canyon, Valle, Anita, Apex, Prado, Red Lake	3,000.00
Total valuation	$299,025.00"

That a statement of said assessment so placed against the property of plaintiff by said Territorial Board of Equalization was transmitted by said Territorial Board of Equalization to the Board of Supervisors of Coconino county pursuant to the provisions of Section 3858 of the Revised Statutes of Arizona of 1901, a full, true and correct copy whereof is hereunto attached, marked exhibit "A," and by reference made a part hereof as fully as though completely set forth herein; that the Board of Supervisors of defendant Coconino county thereafter caused the county assessor of said county to enter said statement so transmitted by the Territorial Board of Equalization

with said description of plaintiff's property upon the assess-
64 ment roll of said county under the proper heads therefor with the total value of said property carried out, and that said Board of Supervisors of Coconino county at its first meeting after said statement was received, put, made and caused to be entered upon its minutes an order stating and declaring the length of the main track and the assessed value of the plaintiff's railway lying in each municipal corporation of said county, through which said railway runs, as fixed by said Territorial Board of Equalization, and that the clerk of said Board of Supervisors thereafter transmitted a copy of said order to the City Council or the Trustees of said municipal corporations, and that a copy of said assessment so placed against the property of this plaintiff, as the same now appears upon the assessment roll of Coconino county, is hereunto attached, marked exhibit "C," and made a part hereof as fully as though completely set forth herein.

By Mr. CLOTFELTER: Paragraph Sixteen reads as follows:

That plaintiff was not satisfied with the said assessment of its property by the Territorial Board of Equalization and appeared before said Board of Equalization at its August meeting held in Phœnix, Arizona, August 13, 1906, and showed said board why such assessment should be changed by cancelling same, and at said August meeting of said board plaintiff filed a written protest against such assessment, a copy of which is hereunto attached, marked exhibit "D," and made a part hereof as fully as though set forth completely herein.

By Mr. DOE: The defendant stands on the answer to that.

65 By Mr. COLTFELTER: Paragraph Seventeen of the Complaint reads as follows:

That the pretended assessment sought to be levied upon and placed against the property of plaintiff by said Territorial Board of Equalization and by said Board of Supervisors of Coconino county was and is null, void and of no effect for the reason that the plaintiff has done and performed each and every act and thing required of it by the terms and provisions of Act No. 68 of the 20th Legislative Assembly of the territory of Arizona, approved March 16, 1899.

By Mr. DOE: That stands denied as in the answer.

By Mr. CLOTFELTER: Paragraph Eighteen may be considered as read. It reads as follows:

That if the defendants be not restrained they will immediately, and before the plaintiff can give notice of and secure a hearing on a motion for the temporary injunction herein prayed for proceed in the manner provided by law for the collection of taxes claimed to be due under said and each of said pretended assessments upon said property of the plaintiff and the property used in connection therewith, and that any proceedings had or taken towards the collection of any taxes claimed to be due under and by virtue of said pretended assessments or either of them will constitute and become an apparent cloud upon plaintiff's title to the property against which said pretended assessments have been levied and placed as aforesaid, and may cause a multiplicity of suits and will cause the plaintiff

irreparable injury and damage, for which there is no adequate, plain or speedy remedy at law.

66 By Mr. DOE: That stands as denied in the answer.

By Mr. CLOTFELTER: The Court will observe by the stipulations on the part of the defendant in the action, at the time of reading the complaint, that there is really only one question of fact and law to try in this case, and that is, as I understand it, whether or not the hotel and the buildings used in connection with them on the station grounds at [illegible]nd Canyon are necessary to the operation of this line of railway of the plaintiff.

By the COURT: Do you concede that that is determinative of the matter?

By Mr. CLOTFELTER: I do not. It is one of the questions of the case. The complaint is drawn on the theory that all the property, including its line of railway, station grounds and property at the terminus of the line is exempt from taxation. There are certain allegations pleaded in the act of exemption from taxation of the railway, and I really do not see how that question is important in this case, the property being assessed as a lump property, land so much, improvements so much. As to what the El Tovar is assessed at, it is not shown by the Assessment Roll.

By Mr. DOE: The land assessed is not of the station grounds, but the land is covered, as the Curio Building is assessed, not as station grounds. In the Territorial Assessment all the property is lumped together, but in the County Assessment just so much of the station grounds as is covered by these particular buildings.

By the COURT: Where is the County Assessment?

[Assessment Roll handed to Court.]

67 By Mr. DOE: The County Assessor does not attempt to assess the station grounds, except so much of the grounds as is occupied by the buildings, not the ground occupied by the station buildings.

By Mr. CLOTFELTER: The Court will remember that the Supreme Court of the Territory has said in effect that all the property is exempt from taxation, assuming the allegations of the complaint to be true. The stipulations now state that the allegations are true, except that the Hotel and other buildings at the station grounds are not exempt and are not necessary to the operation of the railroad, as to that we are prepared to prove that.

By the COURT: Well, the question is here whether the exemption of the real property does not exempt the superstructures, whatever they may be, the railroad property is exempt.

By Mr. DOE: The question is whether a railroad company having station grounds may not own and operate a saloon on the station grounds and whether that is a part of the railroad property covered by the exemption as railroad property.

By the COURT: That is extr-me. Here are station grounds, the law has given the railroad company these station grounds. The law by Act of 1875 gives the railroad company 20 acres for its use for station grounds. If the railroad company owns the land in fee it is real property, and any house put up on that is part of the realty

under the general law. Then the question is whether the tax exemption will exempt the real property used or necessary for the operation of the road. The only theory upon which the 20
68 acres of land given the railroad company by law is that that is necessary for the use of the company. Can we then disassociate it from the realty which may be actually used from that which may not be actually used or necessary for the use of the railroad company as a common carrier?

By Mr. DOE: The law may render necessary an amount of land which is not necessary at the present time. I think there is a broad distinction between that which is unoccupied from that which is diverted to other uses. For instance, what possible use is there for the existence of a Curio building, what necessity to the operation of the road under the declaration of the railroad company?

By the COURT: That might be true if it were not for the peculiar reading of this statute.

Further discussion, and

By the COURT: Why can't the facts be admitted as to the character and permanency of these buildings which may be deemed as a part of the realty and the actual use to which they are put.

By Mr. CLOTFELTER: We are willing to that.

By the COURT: And leave it as a question of law.

By Mr. DOE: It is admitted that the buildings mentioned in the assessment set forth in Exhibit "B" of plaintiff's complaint are permanent structures, permanently attached to the station grounds of the plaintiff at Grand Canyon; that the buildings mentioned as El Tovar and Bright Angel are hotels, used for the entertainment of all persons who travel over the plaintiff's line of railway for the purpose of viewing the Grand Canyon of the Colorado, and all
69 others who apply for hotel accommodations thereat; That the building in said Exhibit named as a Curio Building is, a stone structure permanently affixed to the station grounds of the plaintiff and used exclusively for the display and sale of curios, and for the purposes of the exhibition of Indian modes of life, methods of manufacture, methods of industry, and of Indian traditions and religions; That the building mentioned in said Exhibit as Stables is permanently attached to said station grounds and that a livery stable business is conducted therein in connection with and for the accommodation for the guests of Bright Angel and El Tovar hotels, and others who request livery accommodations; That the Ice Plant, Dormitories, and Electric Plant and machinery connected therewith, are permanently attached to said station grounds and used in connection with the operation of the said hotels.

It is also admitted that a large majority of the persons who are accommodated as guests at the hotels mentioned are persons who travel to the Grand Canyon over the plaintiff's line of railway for the purpose of seeing the Canyon, that is to say, persons who are commonly called tourists, sight-seers.

It is admitted that the major portion of the revenue derived from the operation of plaintiff's line of road comes from passenger travel thereover.

By Mr. CLOTFELTER: We now offer in evidence a duly certified copy of the Declaration of Intention on the part of the Santa Fe & Grand Canyon Railway Company to construct a line of rail-
70 way. I refer to the document mentioned in the allegations, paragraph four, of the complaint.

By Mr. DOE: I make the formal objection to it as irrelevant and immaterial.

By the COURT: The objection will be overruled.

By Mr. CLOTFELTER: The document may be considered as filed?

By Mr. DOE: Yes.

PLAINTIFF'S EXHIBIT NO. "1."

By Mr. CLOTFELTER: Upon the stipulations and the documentary evidence we submit the plaintiff's case.

By the COURT: Have you anything more to offer, Mr. Doe?

By Mr. DOE: I don't think of anything at this time.

By the COURT: Do you desire to present any other view than that which has been presented?

By Mr. DOE: No.

By the COURT: Judgment may go for the plaintiff.

By Mr. BURKS: May the injunctive order be made permanent?

By the COURT: Yes.

By Mr. DOE: I desire the record to show that we except to the ruling of the Court on the demurrer, and to the judgment of the Court.

By Mr. DOE: I give notice of course of appeal to the Supreme Court of the Territory from the judgment of the Court, and desire some time to perfect the record on appeal.

By the COURT: Until the first day of December.

The undersigned, Official Court Reporter of the District Court of the Fourth Judicial District of the Territory of Arizona,
71 hereby certifies that the foregoing and hereto attached 24 pages constitute a full, true and correct report of the proceedings upon the trial of the case of the Grand Canyon Railway Company vs. J. R. Treat, etc., tried at Flagstaff, Arizona, September 22nd, 1908, as to the evidence, both oral and documentary, and the offers of evidence, stipulations and agreements of counsel, also the objections of counsel and the rulings of the Court thereon, and excepting the discussion on legal questions which was not reported. E. & O. E.

W. S. NORVIEL,
Official Reporter.

PRESCOTT, ARIZONA, *Dec. 10th*, 1908.

I hereby certify that the foregoing transcript of Reporter's notes of the testimony in the above entitled action, is correct.

RICHARD E. SLOAN, *Judge.*

Filed Dec. 22, 1908.

[Title of Court and Cause.]

Judgment—No. 766.

This cause came on regularly to be heard this day before the Court sitting without a jury, a jury having been expressly waived by the respective parties; Messrs. U. T. Clotfelter and Paul Burks appearing as counsel for plaintiff, and Messrs. Edward M. Doe and Henry F. Ashurst appearing as counsel for the defendants.

Whereupon both oral and documentary evidence was introduced by the respective parties, and, after arguments of counsel for the respective parties, the cause was submitted to the Court for its
72 decision and judgment, and the Court, having considered the evidence and being fully advised in the premises, finds:

First. That each and all of the allegations contained in plaintiff's amended complaint are true.

Second. That all of the buildings, structures, improvements and other property belonging to plaintiff and situate upon its station ground at Grand Canyon are appurtenant to and constitute a part of said station grounds and are, together with the railway, right of way, franchises and other property of plaintiff described in said amended complaint and in said pretended assessments, copies of which are attached to and made a part of said amended complaint, together with all other real, personal and mixed property used in the construction and operation of plaintiff's said railway, exempt from any and all manner of taxation under and by virtue of the provisions of Act 68 of the Laws of the Twentieth Legislative Assembly of Arizona, approved March 16, 1899.

Third. That the pretended assessments described in plaintiff's amended complaint are, and that each of them is, null, void and of no effect, and that such pretended assessments cast an apparent cloud upon the property of plaintiff therein described and that said and each of said pretended assessments should be cancelled.

Fourth. That plaintiff is entitled to an injunction as prayed for in its amended complaint enjoining defendants and each of them, and each of their agents, servants and employees from doing any act or thing or taking any step or proceeding towards the collection of any of the taxes claimed by them to be due under or by
73 virtue of either of the pretended assessments described in plaintiff's amended complaint and from doing any act or thing to interfere with the free use and enjoyment by plaintiff of the property described in said amended complaint and in said pretended assessments or any part thereof and that the temporary injunction heretofore issued in this cause should be made permanent.

Now, therefore, by reason of the law and the premises, and pursuant to the foregoing findings, it is hereby ordered, adjudged and decreed as follows:

1. That all of the property of plaintiff described in its amended complaint and in the pretended assessments described in said amended complaint, being plaintiff's franchise and right of way and

sixty-six and 45-100 (66.45) miles of main track and roadbeds, with the side-tracks, bridges, culverts and other property used in the construction and maintenance of said railway, said main track running from Williams to Grand Canyon, all in the County of Coconino, Territory of Arizona, with a branch line running to Anita, in said County, together with the permanent buildings and structures placed upon and attached to the right of way and the station grounds of said Railway Company at Grand Canyon, Valle, Apex, Prado and Red Lake, together with the station grounds of said Railway Company at Grand Canyon and Hotel El Tovar, including the laundry, engine and curio buildings, also the Ice Plant, Dormitory and Electric Light Plant and machinery, and the Bright
74 Angel Hotel, including the tents, stables and other property used in connection with said and each of said hotels, is exempt from any and all manner of taxation.

2. That the pretended assessments sought to be placed against plaintiff's property as described in plaintiff's amended complaint are, and that each of them is, null, void and of no effect, and that defendants are hereby ordered and directed to cancel said and each of said pretended assessments.

3. That defendants are, and each of them is, hereby forever enjoined from doing any act or thing or taking any steps or proceedings towards the collection of any of the taxes claimed by them to be due under or by virtue of the pretended assessments in plaintiff's amended complaint described, or either of them, and from doing any act or thing to interfere with the free use, enjoyment and possession by plaintiff of the property described in said pretended assessments or any part thereof.

4. That plaintiff have and recover of and from the defendants its costs and disbursements herein expended or incurred, amounting to $——.

Done in open court this 22nd day of September, A. D. 1908.

RICHARD E. SLOAN, *Judge.*

Filed Sept. 22, 1908.

[Title of Court and Cause.]

Motion for New Trial.

Come now the above named defendants and move the
75 Court to grant them a new trial upon the grounds following, to-wit:

First: That the Court erred in overruling defendant's demurrer.

Second: That the evidence does not sustain the judgment of the court.

HENRY F. ASHURST,
District Attorney,
EDWARD M. DOE,
Attorneys for Defendant.

[Title of Court and Cause.]

Assignment of Errors.

Come now the above named defendants and make and file the following assignment of errors:

First. The Court erred in overruling defendant's demurred to plaintiff's complaint because said complaint does not state facts sufficient to constitute a cause of action nor to entitle the plaintiff to any relief whatever.

Second. The Court erred in overruling defendant's motion for a new trial.

Third. The Court erred in rendering judgment against the defendants because the said judgment is not supported by the evidence and is contrary to law.

HENRY F. ASHURST,
District Attorney,
EDWARD M. DOE,
Attorneys for Defendant.

Filed Dec. 4, 1908.

76 [Title of Court and Cause.]

Appeal Bond.

Know all men by these presents, that we, Joseph R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, as principal, and Thos. A. Rickel and Geo. Babbitt, as sureties, are herein firmly bound unto the Grand Canyon Railway Company, a corporation, the plaintiff and appellee in the above entitled action, in the sum of Three Hundred (300) Dollars, lawful money of the United States of America, to be paid to the said Grand Canyon Railway Company, a corporation, its successors or assigns, for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

Signed with our hands, Sealed and dated this 20th day of October, A. D. 1908.

The condition of the above undertaking is such, that;

Whereas, the above named Grand Canyon Railway Company, a corporation, obtained a judgment in the above entitled Court on the third day of October, A. D. 1908, against the defendants in the above entitled action, and;

Whereas, the above named defendants have given notice of Appeal in open court within the time provided by law from the said judgment of said court to the Supreme Court of the Territory of Arizona, and are desirous of perfecting said appeal;

Now, therefore, if the said defendant and appellant, Joseph
77 R. Treat, as aforesaid, shall prosecute his said appeal with effect and shall pay all costs which have accrued in the

Court below, or which may accrue in the appellate court, then this obligation shall become null and void, otherwise to remain in full force and effect.

(Signed) J. R. TREAT,
Treasurer and ex-Officio Tax Collector of the County of Coconino, Territory of Arizona.
(Signed) THOS. A. RICKEL.
(Signed) GEO. BABBITT.

TERRITORY OF ARIZONA,
County of Coconino, ss:

Thomas A. Rickel and George Babbitt, the persons whose names are subscribed to the foregoing undertaking as the sureties thereon, first having been duly sworn, each for himself doth depose and say: That he is a resident and householder within the County of Coconino, Territory of Arizona, that he is worth the amount for which he has become obligated upon the foregoing undertaking over and above all his just debts and liabilities and property subject to execution and forced sale, and exclusive of all homestead or other exemptions allowed by law.

(Signed) THOS. A. RICKEL.
(Signed) GEO. BABBITT.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

(Signed) T. E. PULLIAM,
[SEAL.] *Notary Public in and for the County of Coconino, Territory of Arizona.*

My commission expires November 22, 1909.

This bond is hereby approved as to form and sufficiency
78 of the sureties thereon, this, the 20th day of October, A. D. 1908.

(Signed) N. G. LAYTON,
Clerk District Court, Coconino County, Arizona.

Filed Oct. 20, 1908, at 10 o'clock A. M.

N. G. LAYTON, *Clerk.*
—— ——, *Deputy.*

Minute Entries of Clerk.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

Court convened pursuant to recess at 9:30 A. M. this 3rd day of October, 1908:

Present:

Hon. Richard E. Sloan, Judge presiding,
Hon. Henry F. Ashurst, District Attorney,
J. W. Francis, Sheriff,
W. S. Norviel, Court Reporter,
N. G. Layton, Clerk.

No. 766.

THE GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. R. TREAT, a- Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendant.

This cause coming regularly — to be heard this day, Paul
79 Burks, Esq., appeared for the plaintiff herein and Edward M. Doe, Esq., and Henry F. Ashurst, Esq., appeared for the defendants herein. It was ordered by the Court that the demurrer of defendants herein be overruled, to which order of the Court the defendants duly excepted.

This cause coming regularly on to be heard this day upon the pleadings, stipulations of fact and admissions of Counsel, it is ordered, adjudged and decreed by the Court, that plaintiff have judgment as prayed in the complaint and that the temporary injunction herein be made perpetual; to which judgment defendants duly excepted and the defendants then and there gave notice in open Court that they appealed from said judgment and the whole thereof to the Supreme Court of the Territory of Arizona;

Whereupon it is stipulated in open Court by and between the respective counsel that defendants may have until December fifteenth, 1908, to prepare, file and serve the record herein upon appeal.

By order of the Court, motion for new trial is deemed filed as of this date, and by the Court denied; to which order denying new trial defendants excepted.

TERRITORY OF ARIZONA,
County of Coconino, ss:

I, N. G. Layton, Clerk of the district Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Coconino, and custodian of the records thereof, do hereby certify the above and foregoing to be a true and correct copy of the minute entries in the case wherein The Grand Canyon Railway Company,
a corporation, was plaintiff, and J. R. Treat, as Treasurer and
80 Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, et al., was defendant therein, that it is all and the whole thereof and that the same is now a record in this, my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at Flagstaff, this the 4th day of December, 1908.

[SEAL OF COURT.] N. G. LAYTON,
As Clerk of the District Court.

Filed May 28, 1909.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

No. 766.

GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. R. TREAT, Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, that the defendant and appellant herein may have until December 25th, 1908, within which to prepare and file the abstract of record herein, including Reporter's tran-
81 script of testimony, and all other matters required by law to be included in said abstract.

U. T. CLOTFELTER,
PAUL BURKS,
Attorneys for Plaintiff.
HENRY F. ASHURST,
E. S. CLARK,
EDWARD M. DOE,
Attorneys for Defendant.

Dated at Prescott, Arizona, December 7, 1908.

Filed Dec. 22, 1908.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

No. 766.

GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
J. R. TREAT, Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between counsel for the respective parties:

First. That defendants may omit from that part of their printed Abstract of Record containing a Transcript of the Reporter's
82 Notes the Certificate of Incorporation of plaintiff and appellee (being the same certificate set out in full in the Amendment to Paragraph One of Plaintiff's Complaint), and that to supply such omission reference in such abstract may be had and made to plain-

tiff's amendment to paragraph one of its complaint wherein a full, true and correct copy of the certificate of incorporation of plaintiff is set out in full.

Second. That the Transcript of the Reporter's Notes certified to by the Official Reporter of the above Court is correct, and that plaintiff has no defects therein to suggest or amendments to propose thereto, and that such Transcript may be presented to the Judge of the above Court as of this date to be certified and filed with like force and effect as if filed within the time and in the manner provided in Subdivision 3, of Section 15, Chapter 74, Arizona Session Laws of 1907.

Dated at Prescott, Arizona, this 10th day of December, 1908.

U. T. CLOTFELTER,
PAUL BURKS,
Attorneys for Plaintiff and Appellee.
HENRY F. ASHURST,
E. S. CLARK, AND
EDWARD M. DOE,
Attorneys for Defendant and Appellant.

Filed Dec. 22, 1908.

83 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Coconino.

No. 766.

THE GRAND CANYON RAILWAY COMPANY, a Corporation, Plaintiff,
vs.
THOMAS DEVINE, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Defendants.

Clerk's Certificate.

TERRITORY OF ARIZONA,
County of Coconino, ss:

I, N. G. Layton, Clerk of the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Coconino, do hereby certify that the above and foregoing constitute a full, true and ——— copy and transcript of the Bond on Appeal in the above entitled action, and of all the papers constituting the record of said case.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 11th day of December, 1908.

[SEAL.] N. G. LAYTON,
Clerk of the District Court of Coconino County, Arizona.

Filed May 28, 1909.
F. A. TRITLE, JR.,
Clerk, Supreme Court.

84 And on to-wit the twenty-fourth day of December, 1908, come the appellants by their attorneys and filed in the clerk's office of said Court *its* certain plaintiff's Exhibit 1, in words and figures following, to-wit:

85 Office of the Secretary of the Territory of Arizona.

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, W. F. Nichols, Secretary of Arizona, do hereby certify that the within is a true and complete transcript of *of* documents filed in this office by the Santa Fe and Grand Canyon Railroad Company and their agents.

In witness whereof, I have hereunto set my hand and caused my official seal to be affixed. Done at Phœnix, at the Capitol, this 22nd day of June, A. D. 1905.

[SEAL.] W. F. NICHOLS,
Secretary of Arizona.

86 *Notice of Intention.*

Notice is hereby given that the Santa Fe & Grand Canyon Railroad Company, a corporation duly organized and doing business under the laws of the Territory of Arizona, does hereby file its notice of intention to construct and operate a railroad from a point at or near the Town of Williams, in the County of Coconino, Territory of Arizona, northward through the said County of Coconino, to a point at or near what is known as the head of Bright Angel Trail, on the Grand Canyon of the Colorado, under the provisions of an act of the Nineteenth Legislative Assembly of Arizona, entitled "An Act to Encourage the Building of Railroads," approved March 16, 1897, said railroad to be about eighty miles, more or less, in length, and the said Santa Fe & Grand Canyon Railroad Company does hereby make and file this notice of its intention to construct the said railroad in order to avail itself of all the benefits and privileges of the hereinbefore mentioned act of the Nineteenth Legislative Assembly of Arizona.

Dated at Prescott, Arizona, September 13, 1897.

WM. O. O'NEILL,
For the Santa Fe & Grand Canyon Railroad Company.

Filed in the office of the Secretary of the Territory of Arizona this 14th day of Sept. A. D. 1897 at 9 A. M.

87 CHARLES H. AKERS,
Secretary of Arizona,
By HARRY R. TRITLE, *Ass't.*

Notice of Intention.

Notice is hereby given that the Santa Fe & Grand Canyon Railroad Company, a corporation duly organized and doing business

under the laws of the Territory of Arizona, does hereby file its notice of intention to construct and operate a railroad from a point at or near the Town of Flagstaff, in the County of Coconino, Territory of Arizona, northwestward, through the said County of Coconino, to a point at or near what is known as the head of Bright Angel Trail, on the Grand Canyon of the Colorado, under the provisions of an act of the Nineteenth Legislative Assembly of Arizona, entitled "An Act to Encourage the Building of Railroads," approved March 16, 1897, said railroad to be about eighty miles, more or less in length, and the said Santa Fe & Grand Canyon Railroad Company does hereby make and file this notice of its intention to construct the said railroad in order to avail itself of all the benefits and privileges of the hereinbefore mentioned act of the Nineteenth Legislative Assembly of Arizona.

Dated at Prescott, Arizona, September 13, 1897.

88 WM. O. O'NEILL,
For the Santa Fe & Grand Canyon Railroad Company.

Filed in the office of the Secretary of the Territory of Arizona this 14th day of Sept. A. D. 1897 at 9 A. M.

CHARLES H. AKERS,
Secretary of Arizona,
By HARRY R. TRITLE,
Assistant.

The Santa Fe and Grand Canyon Railroad Company.

Affidavit of Commencement of Actual Construction by Completion of Survey.

TERRITORY OF ARIZONA,
County of Coconino, ss:

Gwynne Dennis, first having been duly sworn, deposes and says: That he is the secretary of the Santa Fe and Grand Canyon Railroad Company, a railroad corporation organized and existing under the laws of the Territory of Arizona, and makes this affidavit for and on behalf of said railroad company. That the said The Santa Fe and Grand Canyon Railroad Company, on the 14th day of September, 1897, in accordance with the provisions of Act No. 20, of the Nineteenth (19th) Legislative Assembly of Arizona,

89 duly filed with the Secretary of the Territory a notice of its intention to build and construct a railroad, beginning at a point on the Santa Fe Pacific Railroad at or near Williams, and running thence in a northerly direction to the Grand Canyon of the Colorado River, all in Coconino County, Arizona Territory, the length of said road to be about seventy one miles more or less.

And within six months thereafter, to-wit: during the months of November and December, 1897, and January, 1898, the said railroad company, pursuant to the provisions of said notice of intention and of the Act of the Territorial Legislative Assembly hereinbefore referred to, commenced the actual construction of the said railroad

by making and perfecting a survey of said railroad, between the following named points, to-wit:

From Williams on the line of the Santa Fe Pacific Railroad in a northerly direction to Flagstaff Junction, a distance of forty-two miles.

From Flagstaff Junction in a northerly direction to the Rim of the Grand Canyon of the Colorado River, a distance of twenty-three miles.

That said railroad as surveyed and proposed to be built as a new railroad, and designed and intended to be a common carrier, for the general public use.

GWYNNE DENNIS,
Secretary of the Santa Fe and Grand Canyon Railroad Company, for and on Behalf of Said Company.

90 Subscribed and sworn to before me this 11th day of February, 1898. My commission expires Feb'y 6, 1901.

E. S. CLARK,
Notary Public.

Filed in the office of the Secretary of the Territory of Arizona this 14 day of Februar[illegible], A. D. 1898 at 9 A. M.

CHARLES H. AKERS,
Secretary of Arizona.

Statement of Intention to Construct a Railroad, filed by The Santa Fe and Grand Canyon Railroad Company, in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled "An Act to Induce and Encourage the Construction of Railroads Within this Territory," and being No. 68, and approved March 16th, 1899, for the purpose of taking advantage of the exemption from taxation as provided for in the said act.

To Hon. Charles H. Akers, Secretary of Arizona, Phoenix, Arizona.

SIR: The Santa Fe and Grand Canyon Railroad Company respectfully shows:

91 1. That it is a railroad corporation duly organized and existing under and by virtue of the laws of the Territory of Arizona, having filed its Articles of Incorporation on or about the 31st day of July, 1897.

2. That this corporation was chartered for the purpose of constructing and operating within the Territory of Arizona a railroad other than a street or electric railroad.

3. That the general course of the railroad proposed to be constructed by this corporation, is a line of standard guage steam railroad commencing at Williams, Arizona, and running thence in a northerly direction to the Grand Canyon of the Colorado at a point at or near Lombard and the Bright Angel Trail and to the Indian Gardens, and from the said Bright Angel Trail in an easterly direction to the Little Colorado River, and also proceeding by such side-

tracks, extensions, switches and spurs as may be necessary to reach the various groups of mines near or adjacent to the said route or in the County of Coconino, Arizona.

4. The terminal points of the railroad proposed to be constructed by this corporation are Williams, Arizona, the Grand Canyon of the Colorado River, the Bright Angel Trail, the Little Colorado River or the Canyon thereof, and various groups of mines in the County of Coconino, Arizona.

92 5. This statement is filed by this corporation in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled "An Act to Induce and Encourage Construction of Railroads Within this Territory," and being No. 68, and approved March 16th, 1899, for the purpose of taking advantage of the exemption from taxation as provided for in the said act.

Dated August 10th, 1899.

Respectfully submitted,

THE SANTA FE & GRAND CANYON RAILROAD COMPANY,

[SEAL.] By L. W. GOODE, *Its President.*

Attest:

R. L. THOMAS,
Its Treasurer.

STATE OF NEW YORK,
County of New York, ss:

Lowry W. Goode, being duly sworn, deposes and says:

That he is President of the Santa Fe and Grand Canyon Railroad Company, the corporation which made and executed the foregoing statement; that he has read the said statement and knows the contents thereof and that the same is true.

That the foregoing statement was made and executed by
93 the said railroad company by deponent as President, and the corporate seal of the said company was affixed and attested by the Treasurer of the said company, all by virtue of authority of the Board of Directors of the said company and for the uses and purposes in the said statement set out.

L. W. GOODE.

Subscribed and sworn to before me, J. Du Pratt White, a Notary Public in and for the County of Rockland, State of New York, with certificate filed in the County of New York aforesaid, this 10th day of August, 1899.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

My commission expires March 30th, 1900.

[SEAL.] J. DU PRATT WHITE,
Notary Public, Rockland County.

Certificate filed in New York County.

[Ten Cent Documentary Stamp.]

7—522

Filed in the office of the Secretary of the Territory of Arizona this 19 day of August A. D. 1899, at 9 A. M.

C. H. AKERS,
Secretary of Arizona.

94 Statement of the Commencement of the Construction of the Santa Fe and Grand Canyon Railroad, filed by The Santa Fe and Grand Canyon Railroad Company, the owner of the said railroad, in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled, "An Act to Induce and Encourage the Construction of Railroads Within this Territory," and being No. 68, and approved March 16th, 1899, for the purpose of taking advantage of the exemption from taxation as provided for in the said act.

To Hon. Charles H. Akers, Secretary of Arizona, Phoenix, Arizona.

SIR: The Santa Fe and Grand Canyon Railroad Company respectfully shows:

1. That it is a railroad corporation, duly organized and existing under and by virtue of the laws of the Territory of Arizona, having filed its Articles of Incorporation on or about the 31st day of July, 1897.

2. That this corporation was chartered for the purpose of constructing and operating within the Territory of Arizona, a railroad other than a street or electric railroad, and that the said proposed railroad will be called The Santa Fe and Grand Canyon Rail-
95 road, and that this corporation is the owner thereof.

3. That the date and place of the commencement of the construction of the said proposed railroad is as follows:

The said construction was commenced on the 23rd day of October, 1899.

The said construction was commenced at Williams, Arizona.

4. That this statement is filed by this corporation in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled "An Act to Induce and Encourage the Construction of Railroads within this Territory, and being No. 68, and approved March 16th, 1899, for the purpose of taking advantage of the exemption from taxation as provided for in the said act.

Dated, October 23rd, 1899.

Respectfully submitted,

THE SANTA FE AND GRAND CANYON RAILROAD COMPANY,
By L. W. GOODE, *Its President.*

[Ten Cent Documentary Stamp.]

Attest:
[SEAL.] R. L. THOMAS,
Its Treasurer.

96 STATE OF NEW YORK,
County of New York, ss:

Lowry W. Goode, being duly sworn, deposes and says:

That he is the President of the Santa Fe and Grand Canyon Railroad Company, the corporation which made and executed the foregoing statement; that he has read the said statement and knows the contents thereof, and that the same is true.

That the foregoing statement was made and executed by the said railroad company by deponent, as President, the corporate seal of the said company was affixed, and the same was attested by the Treasurer of the said company, all by virtue of authority of the Board of Directors of the said company and for the uses and purposes in the said statement set out.

LOWRY W. GOODE.

Subscribed and sworn to before me, J. Du Pratt White, a Notary Public in and for the County of Rockland, State of New York, with certificate filed in the County of New York aforesaid, this 24th day of October 1899.

In testimony whereof I have hereunto set my hand and affixed my official seal, the day and year last above written.

My commission expires March 30th, 1900.

[SEAL.] J. DU PRATT WHITE,
Notary Public, Rockland Co.

Cert. filed in New York Co.

97 Filed in the office of the Secretary of Arizona, this 30 day of October, A. D. 1899, at 9 A. M.

C. H. AKERS,
Secretary of Arizona.

Affidavit Taken from the Map, Showing the Portion of the Santa Fe & Grand Canyon R. R. Constructed Between October 23rd, 1899, and October 23rd, 1900.

In the Territory of Arizona.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. M. Van Derwerker on oath says that he is the Chief Engineer of the Santa Fe & Grand Canyon Railroad Company, a corporation created under the laws of the Territory of Arizona for the purpose of Constructing a railroad from Williams in said Territory to the rim of the Grand Canon of the Colorado River; that the map of which this certificate is a part correctly shows the line of railroad constructed by the said Railroad Company between October 23, 1899, the date when the construction of said railroad was begun, and October 23, 1900; that this map, with certificate, is made to be filed with the Secretary of the Territory of Arizona in compliance with Section 5

of Act No. 68 of the laws of the Territory of Arizona, approved March 16, 1899 and entitled "An Act to induce and encour-
98 age the construction of railroads within this Territory."

J. W. VAN DERWERKER.

Subscribed and sworn to before me this 17th day of December, 1900.

[SEAL.] E. M. ASTBURY,
Notary Public in and for said County and State.

Filed in the office of the Secretary of the Territory of Arizona this 22nd day of December, A. D. 1900, at 9 A. M.

C. H. AKERS,
Secretary of Arizona.

(Endorsed): No. 1092. In the Supreme Court of the Territory of Arizona. The Grand Canyon Ry. Co. vs. J. R. Treat. Plaintiff's Exhibit 1. Filed Dec. 24, 1908. F. A. Tritle, Jr., Clerk.

99 And on to-wit: the 12th day of January, 1909, being one of the regular juridical days of the January Term of said Court, 1909, the following order, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, et al., Appellants,
vs.
GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

At this day, on motion of Mr. U. T. Clotfelter, attorney for Appellee, herein, it is ordered by the Court that the Appellee be granted leave to file supplemental abstract of record.

And on the same day to-wit: the twelfth day of January, 1900, being one of the regular juridical days of the January Term of said court, 1909, the following other order was had and entered of record in said cause, in words and figures following, to-wit:

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, et al., Appellants,
vs.
GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

100 At this day, it is ordered by the Court that the Appellants herein be granted ten days within which to file brief.

It is further ordered that the Appellee herein be granted ten days thereafter within which to file brief.

It is further ordered by the Court that this cause be submitted on briefs.

And on to-wit the twenty-seventh day of January, 1909, comes the appellee by its attorneys and files in the clerk's office of said Court in said entitled cause its certain Supplemental Abstract of Record in words and figures following to-wit:

101 In the Supreme Court of the Territory of Arizona.

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Supplemental Abstract of Record.

Appellants having omitted from the abstract of record filed by them, plaintiff's exhibit No. 1, mentioned in folio 208 of said abstract of record, and appellee, deeming said exhibit essential to the proper determination by this court of the issues on appeal, makes and files this its supplemental abstract of record:

102 PLAINTIFF'S EXHIBIT 1.

Statement of intention to construct a railroad, filed by The Santa Fe and Grand Canyon Railroad Company, in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled "An Act to Induce and Encourage the Construction of Railroads Within this Territory," and being No. 68, and approved March 16th, 1899, for the purpose of taking advantage of the exemption from taxation as provided for in the said act.

To Hon. Charles H. Akers, Secretary of Arizona, Phœnix, Arizona.

SIR: The Santa Fe and Grand Canyon Railroad Company respectfully shows:

1. That it is a railroad corporation duly organized and existing under and by virtue of the laws of the territory of Arizona, having filed its articles of incorporation on or about the 31st day of July, 1897.

2. That this corporation was chartered for the purpose of constructing and operating within the territory of Arizona a railroad other than a street or electric railroad.

3. That the general course of the railroad proposed to be
103 constructed by this corporation, is a line of standard guage steam railroad commencing at Williams, Arizona, and running thence in a northerly direction to the Grand Canyon of the Colorado at a point at or near Lombard and the Bright Angel Trail and to the Indian Gardens, and from the said Bright Angel Trail in an easterly direction to the Little Colorado river, and also pro-

ceeding by such sidetracks, extensions, switches and spurs as may be necessary to reach the various groups of mines near or adjacent to the said route or in the county of Coconino, Arizona.

4. The terminal points of the railroad proposed to be constructed by this corporation are Williams, Arizona, the Grand Canyon of the Colorado river, the Bright Angel Trail, the Little Colorado river or the canyon thereof, and various groups of mines in the county of Coconino, Arizona.

5. This statement is filed by this corporation in accordance with the provisions of an act of the Twentieth Legislative Assembly of the Territory of Arizona, entitled "An Act to Induce and Encourage the Construction of Railroads Within this Territory," and being No. 68, and approved March 16th, 1899, for the purpose of
104 taking advantage of the exemption from taxation as provided for in the said act.

Dated August 10th, 1899.

Respectfully submitted.

THE SANTA FE & GRAND CANYON RAILROAD COMPANY.

[SEAL.] By L. W. GOODE, *Its President.*

Attest:

R. L. THOMAS,
Its Treasurer.

STATE OF NEW YORK,
County of New York, ss:

Lowry W. Goode, being duly sworn, deposes and says: That he is president of the Santa Fe and Grand Canyon Railroad Company, the corporation which made and executed the foregoing statement; that he has read the said statement and knows the contents thereof and that the same is true.

That the foregoing statement was made and executed by the said railroad company by deponent as president, and the corporate seal of the said company was affixed and attested by the treasurer of the said company, all by virtue of authority of the board of directors of the said company and for the uses and purposes in the said statement set out.

L. W. GOODE.

Subscribed and sworn to before me, J. Du Pratt White,
105 a notary public in and for the county of Rockland, state of New York, with certificate filed in the county of New York, aforesaid, this 10th day of August, 1899.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

My commission expires March 30th, 1900.

[SEAL.] J. DU PRATT WHITE,
Notary Public, Rockland County.

Certificate filed in New York county.

[Ten Cent Documentary Stamp.]

Filed in the office of the secretary of the territory of Arizona this 19 day of August, A. D. 1899, at 9 A. M.

C. H. AKERS,
Secretary of Arizona.

Office of the Secretary of the Territory of Arizona.

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, W. F. Nichols, secretary of Arizona, do hereby certify that the within is a true and complete transcript of *of* documents filed in this office by the Santa Fe and Grand Canyon Railroad Company and their agents.

In witness whereof I have hereunto set my hand and
106 caused my official seal to be affixed. Done at Phœnix, at the capitol, this 22nd day of June, A. D. 1905.

[SEAL.] W. F. NICHOLS,
Secretary of Arizona.

Respectfully submitted,

T. J. NORTON,
PAUL BURKS,
U. T. CLOTFELTER,
Attorneys for Appellee.

Filed Jan'y 27, 1909.
F. A. TRITLE, JR., *Clerk.*

107 And on to-wit: the twentieth day of March, 1909, being one of the regular juridical days of the January Term of said Court, 1909, the following order and judgment, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,
vs.
GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

This cause having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It is ordered that the judgment of the District Court be, and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the Appellee herein do have and recover of and from J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, Appellants herein, and Thos. A. Rickel and Geo. Babbitt, sureties for Appellant J. R. Treat,

Treasurer and Ex-Officio Tax Collector of the County of
108 Coconino, Territory of Arizona, its costs in this court, taxed at — Dollars, together with its costs in the court below in this cause incurred.

And on the same day to-wit: the twentieth day of March, 1909, there was filed in the Clerk's office of said Court in said entitled cause a certain Opinion in words and figures following to-wit:

109 In the Supreme Court of the Territory of Arizona.

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellant-,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Appeal from the District Court of Coconino County, Hon. Richard E. Sloan, Judge.

Messrs. Henry F. Ashurst, E. M. Doe, and E. S. Clark, Attorney General, for Appellants.

Messrs. T. J. Norton, Paul Burks, and U. T. Clotfelter, for Appellee.

Opinion by DOAN, *J:*

The Grand Canyon Railway Company, the appellee in this case, brought an action in the District Court of Coconino County in 1906 against the Treasurer and Tax Collector of that county, praying for an injunction against the collection of taxes that had been assessed against the property owned by that corporation for the year 1906, upon the ground that under the laws of this territory the property of the said corporation was exempt from taxation. A general demurrer to the complaint was sustained on the ground that the complaint did not state facts sufficient to constitute a cause of
110 action. The case was appealed to this court. We held the complaint to be sufficient. 95 Pac. 187.

Under the mandate from this court the case was again tried in the lower court and is now again before us on appeal.

No briefs have been filed in this court by counsel, and the only assignments of error were filed in the lower court and appear in the abstract of the record. The first of these assignments is as to the sufficiency of the complaint; this has been determined by our decision on the former appeal. The other two assignments are too indefinite to enable us to consider them.

As the only question presented to us on this appeal is the identical question that was determined by us in 95 Pacific, 187, we affirm

the judgment of the lower court in this case on the authority of that decision.

FLETCHER M. DOAN,
Associate Justice.

We concur:

EDWARD KENT,
Chief Justice.
JOHN H. CAMPBELL,
Associate Justice.
FREDERICK S. NAVE,
Associate Justice.

(Endorsed): No. 1092. In the Supreme Court of the Territory of Arizona. J. R. Treat, as Treasurer, etc., vs. Grand Canyon Ry. Co. Opinion. Filed M'ch 20, 1909. F. A. Tritle, Jr., Clerk.

111 And on the same day to-wit: the twentieth day of March, 1909, being one of the regular juridical days of the January Term of said court, 1909, the following other order was had and entered of record in said cause in words and figures following to-wit:

No. 1092.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, et al., Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

At this day comes Edward M. Doe, Esq., attorney for Appellant herein, in open court, and gives notice of appeal to the Supreme Court of the United States, from the judgment of this court.

Upon motion of attorney for Appellants herein, it is ordered that the amount of the bond on appeal be fixed in the sum of one thousand ($1,000.) Dollars.

And on to-wit: the fourteenth day of May, 1909, come appellants in said entitled cause by their attorneys and filed in the clerk's office of said Court their certain Application for and Order Granting Appeal in words and figures following, to-wit:

112 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

The above named appellants: J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal

corporation, conceiving themselves aggrieved by the judgment and order entered herein on the 20th day of March, 1909, in the above entitled proceeding, do hereby appeal from said order and judgment to the Supreme Court of the United States, and they pray that this appeal may be allowed and that a transcript of the records and proceeding, and papers upon which said judgment and order was made and duly authenticated may be sent to the Supreme Court of the United States.

EDWARD M. DOE,
E. S. CLARK,
HENRY F. ASHURST,
Attorneys for Appellants.

113 And now, on this 14 day of May, 1909, this cause coming on to be heard on the foregoing application for an appeal, it is hereby ordered that said appeal be allowed as prayed for.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

Attest:
[SEAL.] F. A. TRITLE, JR.,
Clerk of the Supreme Court.

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. Application for and Order granting appeal. J. R. Treat et al. vs. Grand Canyon Railway Co. Filed May 14, 1909, F. A. Tritle, Jr., Clerk.

And on to-wit: the fourteenth day of May, 1909, come appellants in said entitled cause by their attorneys and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

114 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Assignment of Errors.

Come now the appellants above named and assign the following errors which they aver occurred upon the trial of this cause, to-wit:

I.

The Court erred in affirming the judgment of the trial court in said cause.

II.

The Court erred in holding that the property of the Grand Canyon Railway Company is exempt from taxation under the laws of the Territory of Arizona.

III.

The Court erred in holding that the assessments described in the complaint of plaintiff in the court below are null and void.

IV.

115 That Court erred in rendering judgment against the appellants and in favor of the respondents, because said judgment is not supported by the evidence and is contrary to law.

EDWARD M. DOE,
E. S. CLARK, AND
HENRY F. ASHURST,
Attorneys for Appellants.

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. Assignment of Errors. J. R. Treat, et al. vs. Grand Canyon Railway Co. Filed May 14, 1909. F. A. Tritle, Jr., Clerk.

And on the same day to-wit: the fourteenth day of May, 1909. there was filed in the clerk's office of said Court in said entitled cause a certain Statement of Facts in words and figures following to-wit:

116 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, Appellee.

Statement of Facts.

J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, appellants in the above entitled action, having prayed an appeal from the judgment and decision of the above entitled Court, made and rendered on the twentieth day of March, 1909, in said cause, and said appeal having been allowed, and said appellants having also prayed that this Court make and certify, in accordance with the law and rules of the Supreme Court of the United States, a finding and statement of facts in this cause, to be transmitted and used in said appeal, this Court does hereby make and certify the following statement of facts in the nature of a special verdict herein, at the request of said appellants, to-wit:

117 First: That respondent is now, and ever since the tenth day of August, 1901, has been a railway corporation duly organized and existing under and by virtue of the laws of the Territory of Arizona.

Second. That the appellant, J. R. Treat, is now and since the first day of January, 1907, has been the duly elected, qualified and acting Treasurer and Ex-Officio Tax Collector in and for the County of Coconino, Territory of Arizona, and that said Coconino County is now, and at the times herein mentioned has been one of the duly organized counties of the Territory of Arizona, and existing under the laws of Arizona.

Third. That the Santa Fe and Grand Canyon Railroad Company was the predecessor in interest to respondent herein. That on August tenth, 1899, the said Santa Fe and Grand Canyon Railroad Company executed, and on the nineteenth day of August, 1899, filed with the Secretary of the Territory of Arizona, a statement in writing, setting forth the general course and terminal points of the railroad proposed to be constructed by it, and therein stated, among other things, that said railroad so proposed to be constructed from a point near Williams, in Coconino County, Northerly to a point on the rim of the Grand Canyon, and that the terminal points of said railroad were a point near Williams, and a point at or near the Grand Canyon Northerly from Williams, both in Coconino County, and that said statement was filed in pursuance of the provisions of Act No. 68 of the Nineteenth Legislative Assembly of
118 Arizona, approved March 16, 1899.

Fourth. That thereafter on the 7th day of October, 1899, said Railroad Company commenced in good faith the construction of said railroad, and upon the 30th day of October, 1899, filed with the Secretary of Arizona a statement showing the amount of road it had constructed.

Fifth. That on the 22nd day of December, 1900, said Railroad Company filed with the Secretary of Arizona, a map showing that it had constructed during the year ending October 22, 1900, fifty six and thirty-four one hundredths (*36-54*/100) miles of railroad.

Sixth. That thereafter such legal proceedings were had in said Territory that said Railroad passed into the hands of a receiver, and on June 8th, 1901, a decree of foreclosure and order of sale was made wherein the Court directed the sale of all rights, franchises, privileges and property of whatsoever nature, kind or description, including all exemptions from taxation, owned and possessed by said Railroad Company, or which it or its assigns might or could acquire. That thereafter, pursuant to said decree and order, on the 18th day of July, 1901, there was sold to E. D. Kenna, Byron L. Smith, and James H. Eckles, all of the property of said Santa Fe and Grand Canyon Railroad Company, including all exemptions from taxation owned and possessed by it.

Seventh. That on the 20th day of July, 1901, there was
119 entered and filed a decree of Court confirming the sale made as aforesaid by E. B. Gage, a special master, to the purchasers aforesaid. That thereafter said purchasers for the purpose of form-

ing a corporation, and vesting the same with the aforesaid properties, rights, immunities, exemptions and franchises, and of completing the aforesaid railroad, associated themselves with certain other persons, and organized a corporation known as Grand Canyon Railway Company, respondent herein, and thereafter on the 15th day of August, 1901, there was filed in the office of the Secretary of Arizona, an agreement between said purchasers and said Grand Canyon Railway Company, wherein said purchasers agreed to transfer to said Railway Company all of the property of said Santa Fe and Grand Canyon Railroad Company theretofore conveyed to them by E. B. Gage, special master, as aforesaid, and that pursuant to said agreement said purchasers did by deed of conveyance dated August 15, 1901, grant and convey unto said Grand Canyon Railway Company, respondent herein, all of the property theretofore conveyed to them as hereinbefore set forth.

That thereafter on the 12th day of September, 1901, respondent completed said railroad to a point at or near the rim of the Grand Canyon of the Colorado River, and on the 8th day of November, 1901, filed in the office of the Secretary of Arizona, a map showing
the portion of road constructed during the year ending Oc-
120 tober 22, 1901, amounting to ten and seven hundredths (10-7/100) miles. That said respondent caused station grounds to be surveyed at the terminus of said road, and executed maps showing the location thereof, and filed the same in the United States Land Office at Prescott, Arizona, which said maps were subsequently approved by the Secretary of the Interior on August 18th, 1905.

That ever*y* since the completion of said road, the respondent has maintained and operated the same as a common carrier of freight and passengers, and has at all the times herein mentioned maintained at the terminus of said road at the Grand Canyon, hotels for the accommodation of travelers who visit said canyon and others, and for that purpose the respondent has erected and maintained and does now maintain in connection with its operation of its railroad those two hotels upon its station ground known as El Tovar and Bright Angel, together with an electric light and power plant to supply light, heat and power to said hotels, and to its station and other buildings used by it as a carrier, with necessary out buildings used in connection with said hotels, including all the buildings assessed for taxation as hereinafter described.

That during the assessing period of 1906, the Assessor of said Coconino County assessed the said Hotel El Tovar and other buildings and property used in connection therewith. That at its
121 annual meeting for the year 1906, the Territorial Board of Equalization assessed the property of said Grand Canyon Railway Company, including in said assessment franchises and right-of-way of sixty six and forty five one hundredths (66.45) miles of main track and road-bed, together with bridges, culverts, structures, etc., at Grand Canyon, Valle, Anita, Apex, Prado and Red Lake, at a total valuation of Two Hundred Ninety-nine thousand Twenty-five Dollars ($299,025.00), and that said assessment was thereafter transmitted by said Board of Equalization to the

Board of Supervisors of Coconino County and that said Board caused the County Assessor to enter said statement with said descriptions of said property upon the assessment roll with the total value thereof properly carried out.

Done at Phoenix, Arizona, this 11th day of May, 1909.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, Appellants, vs. Grand Canyon Railway Co., Appellee. Statement of Facts. Filed May 14, 1909, F. A. Tritle, Jr., Clerk.

122 And on the same day to-wit: the fourteenth day of May, 1909, come the appellants by their attorneys and file in the clerk's office of said Court in said entitled cause their certain Affidavit of Value in Dispute in words and figures following to-wit:

123 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Affidavit of Value in Dispute.

E. S. Clark of lawful age, first being duly sworn, on his oath says; that he is one of the Attorneys for the Appellants in the above entitled action, and is conversant with the facts relating thereto; and that the matter in dispute in said cause, exclusive of all costs, exceeds the sum of Five Thousand Dollars.

E. S. CLARK.

Subscribed and sworn to before me this 12th day of May, 1909.

[SEAL.] J. E. RUSSELL,
Notary Public.

My commission expires ——

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. Affidavit of value in dispute. J. R. Treat, et al., vs. Grand Canyon Railway Co. Filed May 14, 1909. F. A.
124 Tritle, Jr., Clerk.

And on the same day to-wit: the fourteenth day of May, 1909, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on appeal in words and figures following to-wit:

125 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Know all men by these presents: That we, J. R. Treat, as Treasurer and Ex-Officio Tax Collector, of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, as principals, and C. J. Babbitt and George Babbitt of the town of Flagstaff, County of Coconino, Territory of Arizona, as sureties, are held and firmly bound unto Grand Canyon Railway Company, a corporation, and respondent herein, in the sum of One Thousand ($1,000) Dollars, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators jointly and severally, firmly by these presents. The condition of the above obligation is such that,

Whereas, the said appellants, J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of
126 Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, have been granted an appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the Territory of Arizona, rendered in the above entitled cause by said Court on the 20th day of March, 1909,

Now, therefore, if the above named principals and appellants shall prosecute their said appeal with effect, and answer all costs if they shall fail to make good their said appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

J. R. TREAT,
Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, County of Coconino,
By EDWARD M. DOE,
District Attorney.
C. J. BABBITT,
GEORGE BABBITT.

TERRITORY OF ARIZONA,
County of Coconino, ss:

C. J. Babbitt and George Babbitt, first being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident and free holder within the County
127 of Coconino, Territory of Arizona; that he is worth the sum of One Thousand ($1,000) Dollars, for which he has become obligated upon the foregoing bond, over and above all his just debts and liabilities and any incumbered property situated within the Territory of Arizona exclusive of property exempt from execution and for sale.

C. J. BABBITT,
GEORGE BABBITT.

Subscribed and sworn to before me this 13th day of May, 1909.
[SEAL.] A. M. BUNDY,
Notary Public.

My commission expires March 15, 1913.

The foregoing bond is hereby approved as to form and sufficiency of sureties this 14th day of May, 1909.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. Bond. J. R. Treat, et al., vs. Grand Canyon Railway Co. Filed May 14, 1909. F. A. Tritle, Jr., Clerk.

128 And on to-wit: the fifteenth day of June, 1909, there was filed in the clerk's office of said Court in said entitled cause a certain Statement of Facts submitted by the appellee, in words and figures following, to-wit:

In the Supreme Court of the Territory of Arizona.

No. —.

J. R. TREAT, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,
v.
GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

Statement of Facts Submitted by Plaintiff.

J. R. Treat as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, having prayed an appeal from the judgment entered in the above cause by the above Court on the 20th day of March, 1909, to the Supreme Court of the United States and said appellants having, upon the allowance of said appeal to the Supreme Court of the United States, a certain finding and statement to be transmitted to said Supreme Court of the United States and used upon said appeal and such statement of facts having been presented to the Honorable the Chief
129 Justice of the above Court and signed by him without appellee having been afforded sufficient opportunity thoroughly to examine such statement or to suggest amendments thereto and the appellee deeming the statement of facts so submitted by appellants to be utterly insufficient and prejudicial to the rights of this appellee upon said appeal, The Grand Canyon Railway Company respectfully requests the above Court to make and certify the following statement of facts in the nature of a special verdict herein, at the request of the appellee:

Statement of Facts.

First. That, as alleged in paragraph 1 of its complaint herein as amended, the respondent, The Grand Canyon Railway Company, is now and ever since the 10th day of August, 1901, has been a railway corporation of *of* the Territory of Arizona, duly organized and existing under and by virtue of certain articles of incorporation filed in the office of the Secretary of said Territory, on the 10th day of August, A. D. 1901, under sections 1 to 5 inclusive of an Act of the Territory of Arizona, approved February 8, 1897, being Act No. 3 Session Laws of 1897, and was incorporated by the purchases representing bondholders under a decree foreclosing a mortgage made by the Santa Fe and Grand Canyon Railway Company
130 of all of its property, rights, privileges, franchises and immunities as in said certificate or articles of incorporation recited, of which said Articles the following is a copy:

Certificate of Incorporation of the Grand Canyon Railway Company.

Whereas, the Santa Fe and Grand Canyon Railroad Company was duly incorporated by articles filed with the Secretary of Arizona on or about July 31st, 1897, under the laws of the Territory of Arizona to construct, operate and maintain a line of railroad from the town of Williams in Coconino County, Territory of Arizona, in a northerly direction to the Bright Angel Trail and Indian Garden, at the Grand Canyon of the Colorado River, a distance of about seventy-one (71) miles; and

Whereas, afterwards on the 31st day of January, 1898, said Santa Fe and Grand Canyon Railroad Company executed its certain mortgage or deed of trust to The International Trust Company of Boston, Massachusetts, as Trustee, to secure the bonds of the said The Santa Fe and Grand Canyon Railroad Company issued under and pursuant to said mortgage or deed of trust, and in and by said mortgage or deed of trust mortgaged and conveyed to said The Interna-
131 tional Trust Company, as trustee, all of its railroad, constructed and to be constructed, and all franchises, rights, privileges, immunities and then or thereafter pertaining to said railroad; and

Whereas, before the completion of said railroad, the said, The Santa Fe and Grand Canyon Railroad Company permitted certain liens of contractors to attach to the railroad as constructed and to remain unpaid and unsatisfied; and

Whereas, on June 8th, A. D., 1901, at the April A. D. Term of the District Court of Coconino County, Territory of Arizona, a judgment and decree was entered in a certain cause therein pending wherein Thomas Bassford was plaintiff and The Santa Fe and Grand Canyon Railroad Company, a corporation; the Tusayan Development Company, a corporation; The Canyon Construction Company, a corporation; The International Trust Company, a corporation; trustee; Lombard, Goode and Company, a corporation; L. W. Goode,

Hattie N. Goode; Saginaw and Manistee Lumber Company, a corporation; the J. M. Dennis Lumber Company, a corporation; Union Hardware and Metal Company, a corporation; S. S. and C. E. Derbyshire, a corporation, doing business under the firm name and style of Derbyshire and Derbyshire; E. J. Post and Charles F. Meyers, a co-partnership doing business under the firm name and style of E. J. Post and Company; A. and F. O. Polson, a co-partner-
132 ship, doing business under the firm name of Polson Brothers; The Arizona Central Bank, a corporation; Max Salzman, George W. Martin, J. W. Thurber, R. R. Coleman, J. H. Richards, John Hurley, James Donahue, H. E. Brooks and J. B. Jones, were defendants, which cause was instituted to foreclose a mechanic's lien upon said railroad, and in which cause said The International Trust Company filed a cross-complaint to foreclose the aforesaid mortgage or deed of trust, and in which cause other of said defendants filed cross-complaints to foreclose certain mechanic's liens upon said railroad; and,

Whereas, in pursuance of said judgment or decree there was sold, upon the 18th day of July, A. D. 1901, to Edward D. Kenna, Byron L. Smith and James H. Eckles, all of the city of Chicago, Illinois, as joint tenants and not as tenants in common, the following described property of The Santa Fe and Grand Canyon Railroad Company, to-wit:

The rights, franchises, privileges of every kind, nature or description, including all exemptions from taxation, owned or possessed by the defendant, The Santa Fe and Grand Canyon Railroad Company, of which it or its assigns, may or can hereafter acquire, own or possess, through or under the charter of said Railroad Company, (save and except only its right to be a corporation), or any act of Congress of the United States, together with all other property, either real, personal or mixed, including all right, title and interest, in and to its located right of way from the town of Williams, in Coconino county, territory of Arizona, to the rim of the Grand Canyon
133 of the Colorado, in said county and territory, together with all its rights of way for any and all branch lines; also including all grades, railroad tracks, switches, turnouts, buildings, rolling stock, locomotives, telegraph poles and lines, telephone poles and lines, located or situated upon such right of way, or appurtenances contiguous to it; and such other property, if any there be, of every kind, nature and description, in or to which said railroad has any interests, together with all and singular the tenements, hereditaments, and appurtenances belonging or otherwise appertaining to any of the right of way or other premises and property above mentioned or described. The right of way referred to, begins at the town of Williams, Coconino county, territory of Arizona, and runs thence northerly to the rim of the Grand Canyon, with a line for a branch railroad, running from Anita Junction to Anita mine, a distance of about two and three-quarters (2¾) miles; this right of way being a strip of land two hundred (200) feet in width, having constructed upon it and as a part thereof, sixty-three and three-quarters (63¾) miles of main line, and two and three-quarters (2¾) miles of spur

or branch line to the Anita mine, together with six (6) miles of grade; also all and singular the appurtenances, tenements and hereditaments belonging or appertaining thereto, including all rights acquired, or partially acquired under the Acts of Congress of the United States, approved March 3, 1875, and May 18, 1898.

Whereas, said sale was made under said decree by E. B. Gage, as special master, and such sale was duly confirmed by said court on or about the 20th day of July, 1901; and,

134 Whereas, the said purchasers and their associates, successors and assigns, under and by virtue of the laws of the territory of Arizona, in such case made and provided, did thereby become entitled to form and become a corporation with power to own, operate, exercise and enjoy the properties, franchises, rights and immunities acquired by said purchasers; and

Whereas, the said purchasers, for the purpose of forming such corporation and investing the same with the aforesaid properties, rights, privileges, immunities, exemptions and franchises, and of completing the aforesaid railroad to the rim of the said Grand Canyon of the Colorado upon the route and right of way of said The Santa Fe and Grand Canyon Railroad Company, have associated with themselves the following named persons, viz:

Clinton N. Sterry, who is a citizen of the state of California, residing at Los Angeles; and

Thomas J. Norton, who is a citizen of the state of California, residing at Los Angeles; and

Whereas, the said purchasers and their said associates have organized themselves and do hereby organize themselves as a new corporation as hereinafter in this certificate set forth:

Now, therefore, the undersigned, being the said purchasers and their associates, do hereby certify and state as follows:

First. The name of the new corporation formed by the undersigned is The Grand Canyon Railway Company;

Second. The purposes for which such corporation is formed are as follows:

135 To acquire, own, maintain, and operate the aforesaid railroad, sold as aforesaid, and to construct and complete the same upon the route and right of way of the said The Santa Fe and Grand Canyon Railroad Company to the Grand Canyon of the Colorado River; and also to acquire, own, use and enjoy the railroad and appurtenances, franchises, right, privileges, immunities and exemptions, and all other properties acquired by the said purchasers at said sale as hereinbefore recited;

Third. The maximum amount of the capital stock of such corporation shall be one million, four hundred and fifty-five thousand dollars ($1,455,000), and the same shall be divided into fourteen thousand five hundred and fifty (14,550) shares of the par value of one hundred dollars ($100) each;

Of such capital stock two thousand five hundred (2,500) shares, amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), shall be five per cent cumulative stock, and

Twelve thousand and fifty (12050) shares, amounting in the

aggregate to one million, two hundred and five thousand ($1,205,000), shall be common stock.

The holders of the preferred stock shall be entitled to cumulative dividends at the rate of five per cent per annum from the date of the issue of such stock before any dividend shall be paid on the common stock; and in case of dissolution or liquidation of said corporation, the holders of said preferred stock shall be entitled to receive the par amount of their stock, together with any cumu-
136 lative dividends at the rate of five per cent per annum that shall have accrued thereon and that shall have remained unpaid before any sum shall be payable out of the company's assets to the holders of the common stock. The common stock shall be subject to such rights of the holders of the preferred stock.

Fourth. The number of its directors who shall manage the affairs of such corporation shall be seven and the names and postoffice addresses of the directors for the first year are as follows:

Names.	Postoffice Addresses.
E. P. Ripley	Chicago, Illinois.
W. R. Page	Proctor, Vermont.
Byron L. Smith	Chicago, Illinois.
James H. Eckles	Chicago, Illinois.
E. D. Kenna	Chicago, Illinois.
I. L. Hibbard	Winslow, Arizona.
R. J. Arey	Williams, Arizona.

Fifth. The term for which his corporation is to exist is fifty years.

Sixth. Said railway company shall not issue any preferred stock in excess of two hundred and fifty thousand dollars ($250,000) par value thereof as authorized by Article Third of this certificate, and shall not issue any mortgage bonds except with the consent of the holders of two-thirds of all the common stock of said railway company which then shall be outstanding.

Seventh. Previous to the time of such sale a plan or agreement was entered into in anticipation of the formation of the new corporation and such purchase was made pursuant thereto. Such plan or agreement was entered into by the said Edward D. Kenna, Byron
L. Smith and James H. Eckels and certain holders of first
137 mortgage bonds of The Santa Fe and Grand Canyon Railroad Company issued under its mortgage dated January 1, 1898, and such plan or agreement is as follows:

"Agreement, made this seventeenth day of June, 1901, between Edward D. Kenna, Byron L. Smith and James H. Eckels (hereinafter termed the "committee,") parties of the first part, and such holders of first mortgage bonds of the Santa Fe and Grand Canyon Railroad Company issued under its mortgage, dated January 1, 1898, as shall become parties hereto in the manner hereinafter provided (such bondholders being hereinafter termed the "depositing bondholders,") parties of the second part.

Whereas, the Santa Fe and Grand Canyon Railroad Company (hereinafter termed the "Railroad Company,") a corporation of the territory of Arizona, has issued one thousand of its first mortgage five per cent twenty-year gold bonds, each for the sum of $1,000, secured by mortgage dated January 1, 1898, to International Trust Company, as trustee all of which bonds are now outstanding and unpaid; and

Whereas, the Railroad Company made default in the payment of the interest upon such bonds and is insolvent, and a receiver thereof has been appointed, and the holders of claims against said Railroad Company for materials, supplies and labor, and, also, the trustee under said mortgage of the Railroad Company have instituted proceedings for the enforcement of their claims and to obtain a judicial sale of the railroad and property of the Railroad Company; and

Whereas, the Santa Fe Pacific Railroad Company (herein-
138 after termed the "Santa Fe Pacific Company,") is the owner of $324,000 of said bonds of the Railroad Company and has expressed its willingness to enter into an agreement with the committee to deposit with it the $324,000 of bonds of the Railroad Company and to provide the sum of $15,000 on the terms hereinafter stated:

Now it is Mutually Agreed Between the Parties as Follows:

I.

This agreement shall be signed by the members of the committee, and shall be delivered to D. L. Gallup, comptroller of The Atchison, Topeka and Santa Fe Railway Company, to be held by him at his office, No. 59 Cedar street, in the city of New York, for account of all the parties in interest. Any holders of such bonds (other than the $324,000 of such bonds held by the Santa Fe Pacific Company) may become parties to this agreement on or before such date as the committee may prescribe by delivering, on the terms of this agreement, to said D. L. Gallup, or to such other depositary as the committee may appoint, their bonds, with all coupons thereto belonging except coupons which matured prior to the first day of July, 1900. Depositing bondholders shall receive receipts signed by said depositary, or by any other depositary that may be designated by the committee, specifying the bonds and coupons deposited, and referring to this agreement, which receipts and all rights thereunder shall be transferable, subject to this agreement, in such manner as the committee may approve. The committee, in its discretion, may require any

depositing bondholders, at the time of such deposit, to sign a
139 copy of this agreement, and to deliver the same, to the depositary; but any depositor, by receiving any such receipt signed by the depositary, shall become a party hereto with the same effect as if he signed this agreement. Depositing bondholders who fail to deposit their bonds on or before such date as the committee shall prescribe will not be entitled to deposit the same or to become parties to this agreement, or to share in the benefits thereof, and shall acquire no rights thereunder; but the committee, in its discretion, either generally or in special instances, may extend the time for receiving deposits and may receive deposits to a later date, and may waive any default by writing signed by a majority of the members of the committe, or by resolution.

Owners of bonds of the Railroad Company deposited with the International Trust Company for purposes of foreclosure may deposit such bonds by causing said International Trust Company to deliver the same to the depositary, who thereupon as holder of said bonds may redeposit the same with said International Trust Company in exchange for receipts therefor to be issued by said Trust Company to the depositary.

II.

The depositing bondholders request the committee to endeavor to carry out this agreement and the following plan, viz:

The railroad and property of the Railroad Company, when sold at judicial sale, shall be bid in, by or for account of the committee, which shall cause the same to be conveyed to and vested in a new railroad company, in consideration of the issue therefor of
140 $150,000 par value of the fully paid up five per cent preferred stock, and $1,205,000 par paid up five per cent preferred stock and $1,205,000 par value of the fully paid up common stock of such new railroad company. Such $150,000 of preferred stock shall be part of an authorized issue of $250,000; and such preferred stock shall entitle the holders thereof to receive cumulative dividends at the rate of five per cent per annum before any dividend shall be paid on the common stock and in case of dissolution or liquidation of the company to receive the par amount of their stock together with any cumulative dividends that shall have accrued thereon, and that shall remain unpaid, before any sum shall be payable to the holders of the common stock. Such $1,205,000 of common stock and $250,000 of preferred stock are to be the total authorized issue of the capital stock of such new railroad company.

The committee is to enter into an agreement with the Santa Fe Pacific Company, whereby the Santa Fe Pacific Company shall agree to deposit with the committee said $324,000 par value of such bonds of the Railroad Company, together with coupons thereon maturing subsequent to July 1, 1900, and from time to time to expend for the purposes hereinafter stated or to pay over to the committee such sums in cash amounting in the aggregate to $150,000; and the committee is to agree with the Santa Fe Pacific Company that upon the completion of the reorganization the committee will transfer and deliver

or cause to be transferred and delivered, to the Santa Fe Pacific Company, or upon its order, $150,000 par value of such pre-
141 ferred stock and $529,000 par value of such common stock of such new railroad company, being a majority of all the shares of the capital stock of such new railroad company. Such aggregate sum of $150,000 in cash to be expended by the Santa Fe Pacific Company or paid over to the committee shall be expended by said company or be used by the committee for the following purposes viz:

(*a*) To complete the construction and equipment of the railroad of the Railroad Company, or to make advances to the receiver or to such new railroad company as shall be organized hereafter and become the owner of said railroad for the purpose of completing the same;

(*b*) To acquire, compromise or settle claims against the Railroad Company or said receiver;

(*c*) To pay any sums in cash required to be paid upon the acquisition of said railroad; and

(*d*) To pay any sums required to be paid for expenses or otherwise carrying out such plan, or any of the provisions of this agreement.

Any receiver's certificates or other claims of any kind that shall be acquired by the Santa Fe Railroad Company, by expenditure of any part of said aggregate sum of $150,000, shall be assigned to or upon the order of the committee, or to such new railroad company, or shall be released.

Upon completion of the reorganization the committee shall transfer and deliver, or cause to be transferred and delivered to the Santa Fe Pacific Company, or upon its order, said $150,000 par value of such preferred stock and $529,000 par value of such common stock
142 of the new railroad company, and the committee shall transfer and deliver, or cause to be transferred and delivered, to the respective holders of receipts issued to depositors of the remaining $676,000 par value of bonds of the Railroad Company, upon surrender and cancellation of such receipts, an amount of common stock of the new railroad company equal at par to the par amount of the bonds represented by such receipts respectively.

If the holder of any of such remaining $676,000 of bonds of the Railroad Company shall fail to deposit his bonds and to become a party hereto, the common stock of the new railroad company which would be delivered to such holder if he had deposited his bonds and become a party hereto, shall be turned over by the committee to the new railroad company, to be held as a treasury asset.

It is understood that the aggregate of the sums in cash to be expended by the Santa Fe Pacific Company, or paid over to the committee is to be $150,000 and no more. In case more than the sum of $150,000 cash should be required for the purpose of carrying out such plan and this agreement the committee may obtain from the Santa Fe Pacific Company, or otherwise, such additional sum as may be required by selling at par any of the remaining $100,000 of the authorized issue of such preferred stock, or by charging the deposited securities and the railroad property of the new railroad company

with the payment of such additional sum, and the committee may require the new railroad company to assume the payment of any such additional sum, and to give its notes therefor, payable
143 not less than one year after the date of the completion of the reorganization, and to assume any obligations incurred by the committee. All preferred stock, cash and other assets received or acquired by the committee (including the deposited bonds and all claims that shall be acquired) which shall not be required to perform such agreement with the Santa Fe Pacific Company and to make distribution among the depositing bondholders as above prescribed and to carry out the provisions of this plan and this agreement shall be turned over to the new company.

The committee shall make provisions so that the new railroad company shall not issue any mortgage bonds and shall not issue any preferred stock in excess of the amount above provided for, except with the consent of the holders of two-thirds of all the common stock of the railroad company which then shall be outstanding.

The first board of directors of the new railroad company is to consist of seven directors, and the committee shall cause five persons who are to be designated by the Santa Fe Pacific Company, and two persons who are to be designated by W. H. Page and F. C. Partridge, to be chosen as such board of directors, provided such designation shall be made in writing prior to the organization of the new railroad company.

The committee, in its discretion, may carry out, or attempt to carry out, the foregoing plan through a reorganization of the Railroad Company without a judicial sale, by acquiring all the stock of the Railroad Company, by procuring the cancellation of all its bonds and the release of all claims against it and by readjust-
144 ing its capitalization so as to enable the committee to make delivery of the preferred stock and common stock as above provided to the Santa Fe Pacific Company and to depositing bondholders; and in that event, the Railroad Company shall be deemed to be the new railroad company under the foregoing provisions of this plan.

III.

The depositing bondholders respectively authorize the committee to do all acts and things which the committee in its discretion may deem necessary for the purpose of carrying out said plan and this agreement, and each depositing bondholder for himself, but not for the others, by the deposit of his bonds, assigns and transfers the deposited bonds to the committee and the survivor and their or his successors, as joint tenants, and agrees that the committee shall be vested with all the rights and powers of owners thereof. And without limiting the general foregoing provision, it is hereby declared expressly that the committee shall be authorized to exercise every power vested in the holders of said bonds to purchase or otherwise acquire or contract for the purchase or satisfaction of any liens upon any part of the mortgages, property or any claims against said Railroad Company, and to compromise with any such lien claimants,

or other creditors of said Railroad Company; to take any action which said committee may in its discretion deem proper for the purpose of obtaining, securing or perfecting the title, ownership and possession of said railroad and property of the Railroad Company or any part thereof for the purpose of expediting the reorgani-
145 zation or avoiding litigation; to apply for said purposes the deposited bonds and any funds raised by the committee, and to raise all necessary funds upon pledge of the deposited bonds, charging therewith the rights of depositors under this agreement and their interest in the new securities to be issued, and in general to do whatever in the opinion of the committee may be judicious or advisable for the purpose of carrying out the foregoing plan and this agreement; it being hereby expressly declared that the specification of particular powers herein shall not be construed as limiting the general powers hereby granted and that the exercise of the powers by this agreement conferred upon the committee shall be in all respects discretionary with it.

It is, however, expressly understood and declared that the committee shall not have any power to render any depositing bondholders personally liable for any moneys borrowed by the committee or voluntarily subject any depositing bondholder to any personal liability or obligation, but only the property which is the subject matter of this agreement may be charged with the liabilities or obligations incurred by the committee.

The amount to be bid by the committee at any foreclosure or other sale of the railroad or other property of the Railroad Company shall be entirely discretionary with the committee.

All bonds or other property deposited with or held by any depositary hereunder shall be held and received by such depositary subject to the order and control of the committee; and at any time the committee may appoint a new depositary.

The committee may organize the new company proposed
146 to be formed, in such manner as the committee shall deem best, and may receive and vote upon the stock of such new company until the same shall be transferred to the parties entitled to receive the same hereunder.

This agreement is to be operative whenever $800,000 par value of such bonds of the Railroad Company, or such less amount as the committee shall deem to be sufficient, shall have been deposited hereunder. In case for any reason the committee shall determine that it has become expedient to attempt to carry out the plan, it shall return to the depositors their bonds, upon surrender of the respective receipts therefor, and shall assign and deliver or transfer and convey to the Santa Fe Pacific Company any receiver's certificates, claims or other obligations or property purchased out of any cash paid to the committee by the Santa Fe Pacific Company.

IV.

The committee may adopt its own rules of procedure and it may employ such counsel, attorneys in fact and agents as it deems necessary, may fix the compensation for their services and make such ex-

penditures as it shall in good faith deem necessary for the purpose of carrying out this agreement; and it may procure the performance of any matters and things herein provided for by such agents, trustees and attorneys as it may in its discretion deem proper. The committee shall act by a majority of its members, and the action of such majority shall be binding and have the same effect as if assented to by the full committee. Two members shall consti-
147 tute such majority. Any such action may be taken at a meeting at which a majority of the committee shall be present in person or by proxy; or any action may be taken without a meeting provided such action be assented to or subsequently approved in writing by a majority of all the members of the committee. A record shall be kept of all acts and proceedings of the committee. Any member of the committee may resign. In case of any vacancy the remaining members of the committee by appointment in writing may appoint a new member to fill such vacancy. In like manner the committee by appointment in writing may add to its number. All right, title and powers vested in the committee shall from time to time vest in the members for the time being of the committee without any further appointment, transfer or assignment.

The committee undertakes in good faith to endeavor to carry out this plan and agreement, but the members of the committee assume no personal responsibility for the execution thereof. No member shall be liable in any case for the acts of the other members or of the depositary, nor for the acts of any attorneys, trustees or agents selected in good faith; nor shall any member be personally liable for any error of judgment or mistake of law, but each shall be liable only for his own willful malfeasance.

Present or future members of the committee may be pecuniarily interested in said bonds and in the matters which are subject of this agreement.

The accounts of the committee shall be filed with the new railroad company and when approved by its board of directors the committee shall be discharged.

148 In witness whereof, said committee has caused this agreement to be signed the day and year first above written, and the depositors of bonds have accepted receipts issued by the depositary as hereinbefore provided.

EDWARD D. KENNA,
BYRON L. SMITH,
JAMES H. ECKLES,
Committee."

In witness whereof, we the undersigned, being said purchasers and their associates, have hereunto severally subscribed our names and affixed our seals this 30th day of July, A. D. 1901.

EDWARD D. KENNA [SEAL.]
BYRON L. SMITH. [SEAL.]
JAMES H. ECKELS. [SEAL.]
C. N. STERRY. [SEAL.]
THOMAS J. NORTON. [SEAL.]

Approved:
FRANCIS T. A. JUNKIN,
Counsel to Committee.

STATE OF ILLINOIS,
County of Cook, ss:

Before me, Edward J. Engel, a notary public in and for said county and state, on this day, personally appeared Edward D. Kenna, Byron L. Smith, and James H. Eckels, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 30th day of July A. D. 1901.

[SEAL.] EDWARD J. ENGEL,
Notary Public, Cook County, Illinois.

149 My commission expires April 17, 1905.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Before me, J. L. B. Hamilton, a notary public in and for said county and state, on this day, personally appeared Clinton N. Sterry, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 7th day of August A. D. 1901.

[SEAL.] J. L. B. HAMILTON,
Notary Public, Los Angeles County, California.

My commission expires June 23, 1903.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Before me, John J. Deane, a notary public in and for said city and county and state, on this day, personally appeared Thomas J. Norton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 5th day of August, A. D. 1901.

[SEAL.] JOHN J. DEANE,
Notary Public, City and County of San Francisco, State of California.

My commission expires September 24, 1904.

150 Second. That J. E. Treat, appellant, is now and since the first day of January 1907, has been the duly elected, qualified and acting Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and as such is the successor in office of Thomas Devine against whom this action was commenced on December 7, 1906, having been duly and regularly substituted as a party defendant herein by order of court, and that appellant,

County of Coconino, Territory of Arizona, is now and at all times mentioned herein has been a municipal corporation duly organized and existing under the laws of said Territory as one of the duly organized counties of said Territory of Arizona.

Third. That Santa Fe and Grand Canyon Railroad Company was a corporation duly organized and existing under and by virtue of the laws of the Territory of Arizona and was, by its articles of incorporation, authorized and empowered, among other things, to construct, operate and maintain a railroad from a point near Williams northerly in the County of Coconino to a point on the rim of the Grand Canyon in said County and was the predecessor in interest to certain property and rights thereafter acquired by respondent The Grand Canyon Railway Company.

Fourth. That on August 10, 1899, said Santa Fe and Grand Canyon Railroad Company duly executed, and on the 19th day of August, 1899, filed with the Secretary of the Territory of Arizona a statement in writing setting forth the general course and terminal points of the railroad proposed to be constructed by it, and
151 therein and thereby stated, among other things, that it proposed to construct a railroad from a point near Williams, in the County of Coconino, northerly to a point on the rim of the Grand Canyon and that the terminal points of said railroad were a point near Williams and a point at or near the rim of the Grand Canyon of the Colorado River, both in the County of Coconino, and that such statement was filed pursuant to the provisions of Act No. 68 of the Nineteenth Legislative Assembly of the Territory of Arizona, approved March 16, 1899.

Fifth. That thereafter, on the 7th day of October, 1899, the directors of said Santa Fe and Grand Canyon Railroad Company duly adopted the survey and location of said proposed railroad and on the 22nd day of October, 1899, the construction of such railroad was commenced in good faith; and thereafter, on the 30th day of October, 1899, said Santa Fe and Grand Canyon Railroad Company filed with the Secretary of the Territory of Arizona a statement in writing showing the amount of said railroad which had been constructed to date, being — miles.

Sixth. That on the 22nd day of December, 1900, said Santa Fe and Grand Canyon Railroad Company filed with the Secretary of the Territory of Arizona a map showing the railroad constructed by it during the year ending October 22, 1900, and that the amount of railroad so constructed during such year in fact was, and was shown by such map to be, fifty-six and 34/100 miles (56.34).

152 Seventh. That thereafter such legal proceedings were had in the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Coconino, in a certain suit, numbered 512, brought by Thomas Bassford against said Santa Fe and Grand Canyon Railroad Company and others, and in which the trustee under said mortgage intervened, that said railroad passed into the hands of a receiver and that on June 8, 1901, a decree of foreclosure of said mortgage and other liens and order of sale was entered in said action, wherein and whereby said Court

directed the sale of all rights, franchises, privileges of whatsoever nature, kind and description, including all immunities from taxation owned or possessed by said Santa Fe and Grand Canyon Railroad Company, of which it or its assigns could thereafter acquire, own or possess through or under the charter of said railroad company and that pursuant to such decree of foreclosure and order of sale there was, on July 18, 1901, sold to E. D. Kenna, Byron L. Smith and James H. Eckels all of the property of said Santa Fe and Grand Canyon Railroad Company "including all exemptions from taxation owned or possessed by defendant railroad company or which it or its assigns may or can hereafter acquire, own or possess through or under the charter of said railroad company."

Eighth. That on the 20th day of July, 1901, there was entered and filed in said action No. 512 a decree of court confirming the sale made as aforesaid by E. B. Gage as Special Master to
153 said E. D. Kenna, Byron L. Smith and James H. Eckels, and that said E. B. Gage, as Receiver and Special Master was, by said decree of confirmation, authorized and directed to turn over to said purchasers the property sold as aforesaid.

Ninth. That thereafter said purchasers, for the purpose of forming a corporation and vesting the same with the aforesaid properties, rights, immunities, exemptions and franchises of said Santa Fe and Grand Canyon Railroad Company so purchased by them, and for the purpose of completing the aforesaid railroad, associated themselves with certain other persons and organized a corporation known as The Grand Canyon Railway Company, the respondent herein, and executed articles of incorporation hereinbefore set forth, which said articles were, on the 10th day of August 1901, duly filed in the office of the Secretary of the Territory of Arizona; and that on the 15th day of August, 1901, there was filed in the office of said Secretary of the Territory of Arizona, an agreement in writing between the aforesaid purchasers and said The Grand Canyon Railway Company, wherein and whereby said purchasers agreed to transfer to the respondent all of the property, rights and privileges of said Santa Fe and Grand Canyon Railway Company theretofore conveyed to them by E. B. Gage as Receiver and Special Master as aforesaid, and that pursuant to said agreement said purchasers did, by deed of conveyance duly executed and recorded as required by law, grant and convey unto said respondent all of the property, rights, privileges, franchises and immunities theretofore con-
154 veyed to them as hereinbefore set forth.

Tenth. That thereafter, on the 12th day of September, 1901, the respondent completed to its terminus a point at or near the rim of the Grand Canyon of the Colorado River the line of railroad which was commenced by said Santa Fe and Grand Canyon Railroad Company; and on the 8th day of November, 1901, filed in the office of the Secretary of the Territory of Arizona, a map showing the portion of said railroad constructed during the year ending October 22, 1901, which portion amounted to ten and 7/100 (10.07) miles. That during the month of September, 1901, the

Chief Engineer of respondent caused station grounds to be surveyed at the terminus of said railroad at or near the Grand Canyon of the Colorado River and thereafter prepared and executed maps showing the location of said station grounds, which said maps were thereafter filed in the United States Land Office at Prescott, Arizona, and subsequently approved by the Secretary of the Interior on the 18th day of August, 1905, under and pursuant to the provisions of an Act of Congress approved March 3, 1875.

Eleventh. That ever since the completion of said road the respondent has maintained and operated the same as a common carrier of freight and passengers and has at all times maintained upon its station grounds at the terminus of said road certain hotels, buildings and other structures for the accommodation of travelers who visit said Grand Canyon over said road and others, and that
155 such buildings, structures and improvements so maintained by respondent at the terminus of its said railroad are located upon and are appurtenant to and constitute a part of its said station grounds; that the electric light and power plant in said station grounds was and is necessary to supply light, heat and power to said hotels and to its station and other buildings used by it as a carrier; that said hotels and buildings assessed for taxation were constructed and are maintained and operated to promote and encourage travel over said railroad and are reasonably necessary and convenient for the accommodation of travelers visiting said Grand Canyon over said railroad and are necessary for use in connection with and in the operation of complainant's railroad.

Twelfth. That said Santa Fe and Grand Canyon Railroad Company and the respondent as the successor and assign of said Santa Fe and Grand Canyon Railroad Company have in all respects performed and complied with all of the terms and provisions of said Act No. 68 of the Nineteenth Legislative Assembly of the Territory of Arizona, approved March 16, 1899.

Thirteenth. That during the assessing period of 1906, the Assessor of said Coconino County, Arizona, assessed the said hotel building known as El Tovar and other buildings and property used in connection therewith, located upon the station grounds of respondent at Grand Canyon, Arizona, and that the assessment so
156 placed upon said property by said County Assessor of Coconino County, Arizona, was and is null, void and of no effect.

Fourteenth. That at its annual meeting for the year 1906, the Territorial Board of Equalization of the Territory of Arizona, assessed the property of respondent, including in said assessment the franchises, right of way and sixty-six and 45/100 (66.45) miles of main track, roadbeds, together with bridges, culverts, etc., at Grand Canyon, Valley, Anita, Apex, Prado and Red Lake at a total valuation of two hundred ninety-nine thousand, twenty-five dollars ($299,025) and that said assessment was thereafter transmitted by said Territorial Board of Equalization to the Board of Supervisors of Coconino County, which said Board last named caused the County Assessor of Coconino County to enter said assessment with said descrip-

tion of said property upon the assessment roll with the total value thereof carried out.

Done at Phœnix, Arizona, this 15 day of June, A. D. 1909.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

It is hereby stipulated that the foregoing Statement of Facts, excepting paragraph designated as "First" on page 2 hereof, may be certified to by the Chief Justice of the Supreme Court of the
157 Territory of Arizona and may constitute a part of the Record on Appeal herein to the Supreme Court of the United States.

Dated June 9, 1909.

E. S. CLARK,
H. F. ASHURST,
Attorneys for Appellants.

(Endorsed:) No. 1092. In the Supreme Court of the Territory of Arizona. J. R. Treat, Treasurer &c., et al., Appellant-, v. Grand Canyon Railway Company, Appellee. Statement of Facts submitted by Appellee. Filed June 15, 1909. F. A. Tritle, Jr., Clerk.

158 UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, F. A. Tritle, Jr., Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true and complete copy and transcript of the record, including the Abstract of Record, Plaintiff's Exhibit 1, Supplemental Abstract of Record, Opinion, Application for and Order Granting Appeal, Assignment of Errors, Statement of Facts, Affidavit of Value in Dispute, Bond on Appeal, Statement of Facts submitted by Appellee, and all minute entries had and entered of record in a certain cause lately pending in said Court, No. 1092, wherein J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, were appellants and the Grand Canyon Railway Company, a corporation, was Appellee, as the same remains on file and of record in my office.

And I further certify that the same constitute the record in said cause and the whole thereof.

And I further certify that the attached Citation is the original Citation issued by said Supreme Court of the Territory of Arizona.

In witness whereof, I have hereunto set my hand and the seal of said Court, this 18th day of June, A. D. 1909, at Phœnix, Arizona.

[Seal Supreme Court of Arizona.]

F. A. TRITLE, JR.,
Clerk Supreme Court.

159 In the Supreme Court of the Territory of Arizona.

J. R. TREAT, as Treasurer and ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a Municipal Corporation, Appellants,

vs.

GRAND CANYON RAILWAY COMPANY, a Corporation, Appellee.

UNITED STATES OF AMERICA, *ss:*

To Grand Canyon Railway Company, a corporation:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at Washington, on the 13 day of July, 1909, pursuant to an appeal filed in the office of the Clerk of the Supreme Court of the Territory of Arizona, wherein J. R. Treat, as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, and the County of Coconino, Territory of Arizona, a municipal corporation, are appellants, and Grand Canyon Railway Company, a corporation, is respondent, to show cause, if any there be, why the judgment in said appeal mentioned, should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

Witnesseth: The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of May, in the Year of our Lord, One Thousand Nine Hundred and Nine.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

160 UNITED STATES OF AMERICA,
Fourth Judicial District of Arizona:

I hereby certify that I served the within citation — Paul Burks, Esquire, Attorney of record and Director for said Grand Canyon Railway Company, Appellee, on the 11th day of June, 1909, at the City of Prescott, in Yavapai County, Arizona, by then and there delivering to said Paul Burks, personally a true copy of the within citation.

Dated at Tucson, Arizona, this 14th day of June, 1909.

B. F. DANIELS,
U. S. Marshal.
By T. A. MOONEY,
Deputy.

161 We hereby waive the service of the above citation on us and consent that said citation, with this waiver endorsed thereon, may be filed as complete service upon us and as our appearance on said appeal.

____ ____,
Attorneys of Record for Respondents.

162 [Endorsed:] Marshal's Docket No. 215. No. 1092. In the Supreme Court of the Territory of Arizona. J. R. Treat, Treas., &c., et al. v. The Grand Canyon Railway Co. Citation. Filed June 15, 1909. F. A. Tritle, Jr., clerk. Law offices of E. S. Clark, rooms 23-24-25-26-27-28 Bank of Arizona building, Prescott, Arizona.

Endorsed on cover: File No. 21,748. Arizona Territory Supreme Court. Term No. 522. J. R. Treat, as treasurer and ex officio tax collector of the county of Coconino, Territory of Arizona, et al., appellants, vs. Grand Canyon Railway Company. Filed July 8th, 1909. File No. 21,748.

17

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 86.

Office Supreme Court, U. S.
FILED
DEC 4 1911
JAMES H. McKENNEY
Clerk

J. R. TREAT, AS TREASURER AND EX OFFICIO TAX COLLECTOR OF THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, AND THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, A MUNICIPAL CORPORATION, APPELLANTS,

vs.

GRAND CANYON RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF ON BEHALF OF APPELLANTS.

WILLIAM C. PRENTISS,
ELIAS S. CLARK,
HENRY F. ASHURST,
Attorneys for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 86.

J. R. TREAT, AS TREASURER AND EX OFFICIO TAX COLLECTOR OF THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, AND THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, A MUNICIPAL CORPORATION, APPELLANTS,

vs.

GRAND CANYON RAILWAY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

BRIEF ON BEHALF OF APPELLANTS.

Statement.

This case presents the question whether an exemption from taxation enjoyed by an Arizona railroad company passed to a new company which acquired at a judicial sale the property of the first company, and involves the construc-

tion of two territorial laws, one granting the exemption and the other authorizing the purchase at judicial sale of railroad property by, and organization of, a new company.

These two laws, No. 68 of 1899 and No. 3 of 1897, together with two other laws, Nos. 2 and 28 of 1897, of incidental interest, are printed in full in the appendix hereto.

At each session of the legislature of Arizona, commencing with 1891, had been passed an act substantially in the same language as No. 68 of 1899, entitled "An act to induce and encourage the construction of railroads within this Territory," exempting from taxation for a period of years companies which should, within a specified time, commence the construction of a new railroad, continue construction at a certain rate each year and comply with certain requirements. See acts No. 41, March 16, 1891; No. 56, April 7, 1893, and No. 43, March 20, 1895.

A general railroad incorporation law, authorizing the organization of companies to build and operate new lines of railroad between specified points, had existed since 1887, but no provision had been made for the voluntary or involuntary transfer of railroad franchises and property, except by consolidation of companies under the provisions therefor.

In 1897 the financial difficulties of the old Atlantic & Pacific Railway, and the necessity of reorganization of that property, impelled the legislature to pass three acts, Nos. 2, 3, and 28, printed in the appendix hereto.

Act No. 2, approved February 8, 1897, is entitled "An act authorizing railroad companies to construct and extend their lines of railroad into or through other Territories or States and to purchase or lease other railroads and to sell and lease railroads," and providing

> "That any railroad company now or hereafter existing under the laws of this Territory * * * may purchase or lease the railroad constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this Territory or any other Territory or State, with all the

> rights, privileges and franchises thereto appertaining,"

and that

> "Any railroad company now or hereafter existing under the laws of this Territory may * * * sell or lease its railroad franchises and appurtenances to any railroad corporation organized under the laws of this Territory or of any other Territory or State,"

with the proviso that the line of railroad so purchased should form a branch of or a continuous line with the railroad of the purchasing company.

Act No. 3, approved the same day, February 8, 1897, provided that whenever the railroad or works and property of any railroad corporation should be sold at judicial sale, the purchasers

> "may acquire the property sold, together with any other property, and any franchises, rights, privileges and immunities of such corporation in this Territory or elsewhere,"

and that

> "such purchasers may associate with themselves any number of persons, and with their associates may become a corporation, with power to own, operate, exercise and enjoy the properties, franchises, rights and immunities acquired by such purchasers, upon making, acknowledging and filing in the office of the Secretary of the Territory of Arizona, a certificate in which they shall describe by name and by reference to the charter or law under which it was organized, the corporation whose property or part of whose property they have acquired, and the court or courts by whose authority the sale was made, with the date of the judgment or decrees authorizing or directing the same, and a brief description of the property sold, and also the following particulars * * *"

Then follow sections 2, 3, 4, and 5, specifying what shall be set forth in the certificate.

Section 6 declares that such new corporation shall thereupon be vested with and shall be entitled to exercise and enjoy—

> "all the rights, privileges, franchises, immunities and powers which belong to or could be exercised by the corporation whose property or part of whose property was acquired by such purchasers as aforesaid, and may acquire, own, operate and enjoy all or any part of the property and works of such corporation in the Territory of Arizona or elsewhere," etc.

Section 7 vests such corporation with—

> "All rights, privileges, franchises, immunities and powers which are now given or may be hereafter given to any railroad company organized under the general laws of this territory,"

and with power to lease and purchase the railroad and other property of any other railroad company, and with power to lease and sell its property, privileges, immunities, and franchises to any railroad company.

Section 8, which is particularly in question here, provides.

> "Nothing in this act contained, shall be deemed or construed to give to any corporation created under it, any exemption from taxation created by any existing or future exemption laws of the territory of Arizona."

Act No. 28, approved March 16, 1897, re-enacts as section 1, act No. 2 of February 8, 1897, and in section 2 authorizes the purchase direct, or from the immediate purchasers, at any judicial sale, any railroad or part thereof by "any corporation of this Territory, or of any other State or Territory, or of the United States which may be authorized by its charter or by the laws of such State or Territory or the

United States to purchase or acquire such or similar property,

> "together with any lands or other property, franchises, rights, immunities, exemptions, and powers of such railroad company,"

and, like act No. 3, proceeds to vest such purchasing company with all the property purchased,—

> "together with all the franchises, rights, immunities, exemptions and powers belonging, or appertaining thereto or to the corporation whose railroad or other property may be purchased,"

and with—

> "all the rights, franchises, powers and immunities which are now given or which may be hereafter given to railroad companies organized under the laws of this territory."

The follows an excepting or saving clause similar to section 8 of act No. 3, viz:

> "Save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of this Territory in reference to inducing the building of new railroads."

On the same day, March 16, 1897, was approved act No. 20, entitled, "An act to induce and encourage the construction of railroads within this territory" substantially similar to act No. 68 of 1899, and the prior acts of 1891, 1893, and 1895, before referred to.

Act No. 68 of 1899, like all of the similar acts passed at the preceding sessions of the legislature, provided:

> "SECTION 1. That for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within this territory, the capital stock, franchise, right of way, superstructures, improvements, betterments, telegraph lines and all

other real, personal and mixed property used or necessary in the construction and operation of railroads, to be conducted as common carriers of freight and passengers, other than street and electric railroads, hereafter constructed in accordance with the provisions of this act, and whether owned or operated by a person or persons, association or railway corporation, his, their, or its successors or assigns, be and the same is hereby declared to be exempt from any and all manner of taxation for and during the period of ten years from and after the date of the passage of this act."

Sections 2, 3, 4, 5, and 6, prescribe conditions to be complied with.

Acts Nos. 3 and 28 of 1897 were reenacted in the Revised Statutes of Arizona of 1901.

The case presents the pure question of statutory construction, whether this act No. 68, which declares that a railroad constructed in accordance therewith, "whether owned or operated by a person or persons, association, or railway corporation, his, their or its successors or assigns," should be exempt from taxation for a period of ten years, is subject to and restricted by section 8 of act No. 3 of 1897 (R. S. Arizona, 1901, par. 887), declaring that nothing in that act should be deemed or construed to give to any corporation created under it any exemption from taxation created by any existing or future exemption laws of the Territory of Arizona, thus withholding the exemption granted by act No. 68 from a company purchasing at a judicial sale through a committee of incorporators.

The facts in the case upon which the question arises are briefly as follows:

After the passage of act No. 68 in 1899, and pursuant thereto, the Santa Fe & Grand Canyon Railroad Company, organized for the purpose, commenced the construction of a railroad from Williams to the Grand Canyon, a distance of about 70 miles, and complied with the conditions of that act, but before the road was completed a decree for sale was

entered in proceedings instituted to enforce certain liens and foreclose a mortgage upon the property.

The language of the mortgage is not found in the record, but this decree undertook to direct the sale of the property of the Santa Fe & Grand Canyon Railroad Company, including "all rights, franchises, privileges of every kind, nature or description, including all exemptions from taxation, owned or possessed by the Santa Fe & Grand Canyon Railroad Company, or which it or its assigns may, or can, hereafter acquire, own or possess."

At the sale on July 18, 1901, confirmed July 20, 1901, E. D. Kenna, Byron L. Smith, and James H. Eckles were the purchasers, and, proceeding under act No. 3 of 1897 aforesaid, and associating with them C. N. Sterry and T. J. Norton, organized the appellee corporation pursuant to a previous agreement which was incorporated in the certificate of incorporation of the new company filed August 10, 1901 (R., p. 11).

A deed of conveyance following the terms of the decree was received by the purchasers, and by force of the statute, act No. 3 aforesaid, and the filing of the certificate of incorporation, the property and appurtenances vested in the new corporation; yet, nevertheless, the three purchasers executed a formal conveyance to the new corporation, following the terms of the decree and conveyance to them.

The new corporation resumed the construction of the railroad and finished the same on September 12, 1901, and, claiming to have succeeded to the right of exemption from taxation, filed, on November 8, 1901, a map showing the portion of the road constructed and as completed during the year ended October 22, 1901, in assumed compliance with act No. 68 aforesaid.

During the month of September, 1901, appellee located at its northern terminus an area of 20 acres for station grounds, and filed a map thereof with the Secretary of the Interior, which was, on August 18, 1905, duly approved, and thereupon erected upon said station grounds hotels and appur-

tenances, with electric and power plant to supply light, heat, and power for said hotels and its depot and other buildings.

In the year 1906 the assessor of Coconino County and the board of equalization of the Territory levied and assessed upon the aforesaid property of the appellee county and territorial taxes in the sum of $11,975.63. Against this assessment the Grand Canyon Railway Company entered a formal protest before the territorial board of equalization, claiming that the property taxed was entitled to exemption from taxation by virtue of act No. 68 of 1899, whether in the ownership and possession of the Santa Fe & Grand Canyon Company or of it (the Grand Canyon Railway Company) as the successor of the former corporation.

Upon the refusal of the board of equalization to vacate or set aside the assessment and the listing of the tax for collection the Grand Canyon Railway Company brought this action in the district court to restrain the collection of such taxes. To the amended complaint the trial court sustained a general demurrer, without leave to amend, and entered judgment for the defendant in accordance therewith, from which judgment and ruling an appeal was taken to the Supreme Court of the Territory of Arizona, which court, on March 27, 1908, rendered judgment reversing the judgment of the lower court and remanded the case with instructions to the district court to overrule the demurrer to the complaint and take such further proceedings as were not inconsistent with its opinion and judgment. The case again came on for trial and the demurrer to the complaint was by the court overruled. Evidence was then introduced and the cause submitted, whereupon said district court rendered judgment in favor of the plaintiff (respondent here) and against the defendants (appellants here). From this judgment an appeal was duly prosecuted by the defendants to the Supreme Court of the Territory of Arizona, which in due time affirmed said judgment on March 20, 1909.

Assignment of Errors.

Appellants respectfully assign as error the judgment of the Supreme Court of the Territory of Arizona affirming the judgment of the district court of Coconino County in overruling the demurrer of the defendants to plaintiff's complaint and in rendering judgment in favor of the plaintiff to the effect that the railroad property and appurtenances of the plaintiff were exempt from taxation under the laws of the Territory of Arizona, and in support of said specifications appellants present the following:

I.

The court erred in affirming the judgment of the trial court in said cause.

II.

The court erred in holding that the property of the Grand Canyon Railway Company, respondent herein, is exempt from taxation under the laws of the Territory of Arizona.

III.

The court erred in holding that the assessments described in the complaint of plaintiff in the court below are null and void upon the theory that said property is exempt from taxation because the laws of the Territory of Arizona then and now in force show plainly that said property was not exempt from taxation.

IV.

The court erred in rendering judgment against the appellants and in favor of the respondent because said judgment is not supported by the evidence and is contrary to the law.

ARGUMENT.

The Territorial acts, to which we have referred, form a consistent body of law covering the subject of grant of franchises, the construction of railroads, and the transfer of railroad franchises and property.

First, there is the general railroad incorporation law of 1887, authorizing the incorporation of new companies to construct railroads between specified points, and making no provision for the transfer of the franchise or property except through consolidation with another company organized under that law.

Then come the successive acts encouraging the construction of new railroads by exempting from taxation for a period of years, of which act No. 68 of 1899, now in question, is one.

Such exemption laws do not amount to a contract protected by the constitutional guarantee.

Wisconsin & M. R. Co. *vs.* Powers, 191 U. S., 379.

So that, although these acts confer the exemption upon the constructing company, its successors and assigns, the words successors and assigns are not words of contract, but merely expressions of legislative intent to be considered and construed in connection with the expression of legislative intent to be found in the statute under which the purchasing company derives its franchise and authority to succeed the constructing company.

But even if these acts amounted to contracts with the constructing companies, the constitutional guarantee would extend only to those companies, and whether or not the exemption would pass to a successor or assign would likewise depend on the legislative intent to be determined in the same manner.

Rochester R. Co. *vs.* Rochester, 205 U. S., 236.

And in determining whether the transfer of an exemption was authorized, directed or intended, every doubt is resolved in favor of the governmental power of taxation, and clear and unmistakable evidence of intent to part with it is required.

Rochester Co. *vs.* Rochester, *supra.*

It may be conceded that these exemption acts, by using the words successors or assigns, evidence the intention of the legislature that the exemption might pass to a successor or assign, but whether the particular successor or assign, in any particular instance, succeeds to the exemption is to be determined by the statute which grants the new company power to become such successor or assign.

It may be conceded that the company resulting from a consolidation of two companies under the power conferred by the general incorporation law would, in the absence of any declaration of the legislature to the contrary, be a proper successor or assign within the intent of the legislature. Such a corporation would still be in effect the constructing corporation, and the exemption would still be enjoyed by those who were the proper objects of the bounty of the legislature.

That being so, then, so far as corporations are concerned, up to 1897, such a successor resulting from consolidation, was the only successor or assign within the contemplation of the legislature, for no authority had been given for one railroad corporation to acquire or succeed to the franchise or property of another otherwise than through consolidation.

By act No. 2 of 1897 the legislature went a step further, and empowered any railroad corporation to sell, and any railroad company then or thereafter existing under the laws of the Territory to purchase, the railroad of such selling company, provided such railroad formed a branch of, or continuous line with, the line of the purchasing company. This act empowered the purchasing company to acquire with the railroad "rights, privileges, and franchises thereto

appertaining," and while these words in themselves would not include or embrace exemption from taxation (Rochester Co. *vs.* Rochester, *supra*), yet, in the absence of any express declaration to the contrary, it may be conceded that a railroad thus purchasing the franchise and property of another company enjoying exemption under one of these acts to encourage the building of new railroads, would succeed to such exemption by virtue of the words successors and assigns in such exemption act.

This act No. 2 of 1897, as we have suggested, contemplated what may be termed a private sale of the franchise and property of the selling company. In such case the exemption from taxation would be a material element in the value of the property sold, and the constructing company, the object of the bounty of the legislature, would still be receiving the benefit of the exemption in the purchase price of the property, which would be presumed to be enhanced thereby.

And when the legislature, by act No. 3 of 1897 (under which the appellee company acquired its existence, powers, and privileges), which was approved the same day as act No. 2, undertook to authorize the purchase of the franchise or property, or both, of a railroad company at a judicial sale, and the forming of the purchasers and their associates into a new corporation, while adding the words "immunities" to the specification of "franchises, rights, and privileges," which had been used in act No. 2, it yet inserted section 8 to the effect that—

> "Nothing in this act contained shall be deemed or construed to give to any corporation created under it, any exemption from taxation created by any existing or future exemption laws of the Territory of Arizona."

This is a clear declaration of legislative intent that such a corporation, given the benefit of purchasing a railroad at judicial or foreclosure sale, and presumably at a bargain,

should not have the benefit of any exemption from taxation under any law of the Territory of Arizona.

The only exemption laws of the Territory of Arizona were these acts to encourage the building of new railroads, and only to these exemption laws as then existing could section 8 apply. The construction company could in no wise benefit by such a judicial sale. On the contrary, its investment would be practically wiped out. The purchasing company, created by act No. 3, would acquire the property at a sacrifice, and could have no reasonable claim to the bounty of the legislature. It being granted the privilege of thus acquiring the property at a sacrifice, at the expense of the stockholders of the constructing company, it received at the hands of the legislature more than an equivalent for the exemption from taxation.

The same considerations in the mind of the legislature applied with equal force to future exemption laws that might be passed, and especially to such acts to encourage the building of new railroads which the legislature at each preceding session had passed, and one of which that particular legislature was then considering (No. 20), and which it was contemplated would be passed by succeeding legislatures.

The old Atlantic & Pacific Railway, however, enjoyed exemption from taxation under a Federal statute (act of July 27, 1866, 14 Statutes, 292. See New Mexico *vs.* U. S. Trust Company, 172 U. S., 171). And act No. 3 extended to the purchase or acquisition of interstate as well as intraterritorial railroads, which might have exemptions from taxation under State or Federal laws. Conceding, for the sake of the argument, that the word immunities in act No. 3 may be construed to embrace exemptions from taxation, it is, therefore, evident that the legislative intent was also that a purchasing company, under Act No. 3, should be empowered to succeed to exemptions from taxation attaching to the purchased railroad under the laws of the United States, a State, or another Territory, but not to exemptions from tax-

ation under then existing or future laws of the Territory of Arizona. Very properly, the legislature of Arizona would not be presumed to attempt to interfere with the will of Congress or the legislature of a State, or of another Territory. It may be that the immediate intent of the legislature was to empower a corporation created under act No. 3, purchasing the Atlantic & Pacific Railroad at a then anticipated judicial sale, to succeed to the exemption from taxation then enjoyed by the railroad under the Federal statute.

But it is not necessary to concede that the word immunities as used in act No. 3, was intended to embrace exemption from taxation, for there may have been, under then existing laws of the Territory, or might be under future laws of the Territory, immunities other than exemption from taxation, and the intent of the legislature in inserting section 8 may have been to repel the construction of the word immunities as embracing exemptions from taxation under any law of Arizona and evidence the intent that such purchasing corporation should not enjoy any exemption from taxation under any law of the territory.

In either case, it is clear that section 8 is effective to deprive a corporation created under act No. 3 of the power to succeed to an exemption from taxation under then existing or future law of the Territory of Arizona.

But, if there could be doubt as to the purpose and intent of the legislature in inserting section 8 in act No. 3, the result is the same, for, as declared in Rochester Co. *vs.* Rochester, *supra,* and the long line of authorities cited therein, every doubt is resolved in favor of the power of taxation, and clear and unmistakable evidence of intent to part with it is required.

The word "give," in section 8 of act No. 3 was aptly used to express the legislative intent, for, as held by this Court in Rochester Co. *vs.* Rochester, *supra,* the exemption, whether a mere bounty, or a matter of contract, vests only in the immediate recipient; and, whether it passes to a particular successor or assign, depends not upon the use of the terms suc-

cessors and assigns in the granting act, but upon the intent of the legislature as ascertained from the act empowering the successor or assign to succeed to the franchise or property, or both. If that act be silent on the subject, it might evidence the legislative purpose that the intent expressed in the granting act by the use of the words successors and assigns should be operative, which would be equivalent to an expression of such intent in the empowering act. In either case, it is the empowering statute, creating the new corporation, and defining its powers and privileges, which is the controlling act of the legislature. Consequently, the power to succeed to the exemption, and therefore the exemption itself, may properly be said to be given or not given by the enabling statute as the legislative intent may appear thereby.

Nor can it be contended reasonably that section 8 applies to and qualifies only section 7. If such had been the intent of the legislature the language of section 8 would have been incorporated in section 7. The making of an independent section, commencing "Nothing in this act contained," conclusively evidences the legislative intent that the language thereof should govern the whole act.

This is also rendered clear by the legislative history of act No. 3. Section 8 was not in the bill as introduced, but was inserted as an amendment while the bill was under consideration in the Council. See Journal of the Legislative Assembly of Arizona, 1897, Council Bill No. 3, pp. 321 and 346.

But the intent of the legislature is made even clearer by act No. 28, of 1897.

It will be remembered that act No. 2 empowered a railroad company organized under the laws of the Territory to purchase from a railroad company organized under the laws of the Territory, or any other Territory or State, a railroad which would form a branch of, or a continuous line with, its own line, and act No. 3 was limited in operation to a purchase at judicial sale, through a committee, by a corporation created under that act for the purpose. These, with the right of consolidation granted by the general railroad incorpora-

tion law, were the extent to which the legislature had gone in respect of the transfer of railroad franchises and property. There is also a feature of act No. 3 to be noticed at this point: As the purchasers at the judicial sale, acting as a committee, were, in effect, the purchasing corporation, the purchase could legally be used as the basis of consideration for the issuance of capital stock only to the amount of the purchase price at the judicial sale. And it is worthy of note at this point that this necessarily implied condition or restriction was totally disregarded in the organization of the appellee company and the issuance of its capital stock. From a reading of the basic agreement incorporated in the charter of the appellee company (R., p. 15), it appears that only $150,000 was provided for the purpose of purchasing the property of the Santa Fe and Grand Canyon Railroad Company at the judicial sale, and presumably the amount bid and paid at the sale was not in excess of that amount (the amount bid not appearing in the record). Yet capital stock to the amount of $1,355,000 was issued and distributed without consideration therefor other than the amount paid at the sale, and such additional small amount as may have been expended by the committee in defraying expenses, and the Santa Fe Pacific Railroad Company, which held bonds of the Santa Fe and Grand Canyon Railroad Company to the amount of $324,000, and advanced the sum of $150,000 for the purpose of purchasing the property, received $150,000 of preferred stock and $529,000 of common stock of the appellee company, or a total of $679,000. A company organized in such a manner is not a proper recipient of exemption from taxation, and this instance of high financing evidences the wisdom of the legislature in inserting section 8 in act No. 3.

The general railroad incorporation act, act No. 2, and act No. 3, thus restricting the power of issuing capital stock, left much to be desired from the standpoint of the railroad financier. But whatever the moving cause, the legislature the following month passed act No. 28, which, in its first section

re-enacted act No. 2, adding the proviso that when a railroad is purchased under or by virtue of a judicial sale, such purchase should be subject to such obligations as might be provided for by the judgment or a decree of the court, Whether it was intended thereby to extend the provisions of of act No. 2, as thus re-enacted, to purchases at judicial sale is immaterial here; but section 2 of act No. 28 in terms empowered any corporation of the Territory, or of any State or Territory, or of the United States, to purchase at judicial sale direct or from the immediate purchasers thereat any railroad or part thereof situate in the Territory, together with "any lands or other property, franchises, rights, immunities, exemptions and powers of such railroad company," thus for the first time adding to such specification the word "exemption"; and providing that such purchasing corporation should become vested with all the franchises, rights, immunities, exemptions, and powers belonging to the corporation whose railroad or other property may be purchased, and should have all the rights, franchises, powers, and immunities (omitting exemptions) "which are now given or which may be hereafter given to railroad companies organized under the laws of the Territory of Arizona,

> "Save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of this Territory, in reference to inducing the building of new railroads."

Here is a clear expression of the legislative intent that a *pre-existing* railroad company purchasing at a judicial sale should not enjoy exemption from taxation under one of these acts to induce the construction of new railroads that might be thereafter passed, which necessarily reflects the same legislative intent upon act No. 3, the only law authorizing the creation of a *new* corporation to acquire at judicial sale.

It cannot be reasonably contended that the saving clause in section 2 of act No. 28 operates only upon the grant of rights, powers, franchises and immunities given to railroad companies organized under the laws of the Territory, for an already existing railroad company would have no power under any Territorial law to build a new railroad. The general railroad incorporation law did not authorize a company organized under it to build any other railroad than that specified in its charter, and contained no provision for amending the charter for the purpose of extending it to the construction of a new line; and the only other act authorizing the incorporation of a railroad company, viz: Act No. 3 of 1897, likewise limits such company to the construction of the line specified in its charter.

The saving clause in section 2 of act No. 28 would therefore be meaningless unless it applies to an exemption enjoyed by a company whose railroad is purchased.

Furthermore, as noticed before, the word exemptions appears in section 2 of act No. 28 only in the clauses referring to the incidents of the railroad purchased.

On the same day that act No. 28 was approved there was also approved act No. 20, one of the series of these successive acts to encourage the construction of new railroads, using the words successors or assigns, as had been done in the previous acts of 1893 and 1895, and as was done in the later act No. 68 of 1899, here in question.

It is manifest that the legislature, in using the words successors and assigns in these later acts, just as they had been used in the previous acts of the series, intended that they should have the same operation as in the preceding acts.

It must be admitted that acts numbers 3 and 28 of 1897 operated to prevent the transfer through judicial sale of exemptions which may have attached under the preceding acts of 1891, 1893, and 1895 to encourage the building of new railroads, and it being manifest that the intent of the legislature in the later acts, No. 20, of 1897, and No. 68, of 1899, was the same as that of the legislature of 1897, when acts 3

and 28 of that year were passed, it follows that act No. 68 of 1899 is controlled necessarily by act No. 3 of 1897.

The argument is still further fortified by the fact that in the Revised Statutes of Arizona, of 1901, passed by the legislature of 1901, which adjourned in March of that year, act No. 3 of 1897 was re-enacted as paragraphs 880 to 887, pages 343-345, and act No. 28 of 1897 was re-enacted as sections 1 and 2 of paragraph 864, pages 336-7; and it is to be noted that section 8 of act No. 3, as re-enacted as paragraph 887, of the Revised Statutes, is extended in operation to the whole chapter "Railroad Corporations," and that in section 2 of act No. 28, as re-enacted as section 2 of paragraph 864, the semicolon between the words "whose railroad or other property may be purchased" and the words "shall have all the rights," etc., is changed to a comma, thus indicating the understanding of the legislature that the saving clause extends to the whole of section 2, and not merely to the preceding clause which follows the semicolon in the act of 1897.

And the extension of section 8 of act No. 3 of 1897, as paragraph 887 of the Revised Statutes, to the whole chapter, embracing act 28 of 1897, as re-enacted, also makes the intent of the saving clause in the latter act clear.

It is also to be noted that the final title of the Revised Statutes of 1901, page 1056, paragraph 4235 repealed all acts of the 15th to 20th legislative assemblies except those specified, among which is the series of acts to encourage the construction of railroads to which we have referred, commencing with the act of 1891 and including act No. 68 of 1899.

It is unnecessary to comment upon the effect of this revision and re-enactment of these statutes in March, 1901, preceding the judicial sale of the property of the Santa Fe and Grand Canyon Railroad Company, and the creation of the appellee company. No room is left for the argument that act No. 68 of 1899 was subsequent to acts No. 3 and 28 of 1897, and operated as a repeal of the saving clauses in

those acts so far as the operation of act No. 68 is concerned. By the revision of 1901 acts Nos. 3 and 28 of 1897, as reenacted in the revision, became in fact subsequent in time to act No. 68 of 1899.

We submit that the only reasonable and proper construction of all these statutes is that the exemption from taxation granted to the builders of a new railroad might pass to another company purchasing at private sale, or to a company resulting from consolidation, but that the legislature has withheld it from companies purchasing at judicial or foreclosure sale.

This, in effect, was the opinion of Hon. Richard E. Sloan, sitting in the trial court, who, in deciding this case in the first instance, said in part:

> "At the time the plaintiff was incorporated the statutes recognized two classes of railroad corporations, those which might be organized under the general railroad incorporation act for the purpose of building, constructing, and operating railroads, and those which might be incorporated for the purpose of acquiring by purchase the property of another railroad corporation sold under foreclosure proceedings or pursuant to the judgment or decree of some court of competent jurisdiction, or by virtue of an execution issued thereon.
>
> "The authority to incorporate for the latter purpose and the method of such incorporation were provided for by act No. 3, laws of 1897. This act was amended at the same session of the legislature by the act No. 28, approved March 16th, 1897. * * *
>
> "I construe the clause: 'Save and except only the exemption from taxation,' etc., to mean that where a railroad be sold by judicial sale that the purchaser takes the property without the exemption from taxation which the former may have enjoyed prior to such sale.
>
> "The plaintiff relies upon the wording of the statute under which it claims its exemption in support of its contention that notwithstanding the provisions of the laws of 1897, above quoted, its property, although

acquired by purchase under foreclosure, is exempt from taxation.

"Section 1 of act 68, laws of 1899, reads:

" 'That for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within the Territory, the capital stock, franchise, right of way, superstructures, improvements, betterments, telegraph lines and all other real, personal, and mixed property used or necessary in the construction and operation of railroads, to be conducted as common carriers of freight and passengers, other than street and electric railroads, hereafter constructed in accordance with the provisions of this act, and whether owned or operated by a person or persons, association or railway corporation, his, their, or its successors or assigns, be and the same is hereby declared to be exempt from any and all manner of taxation for and during the period of ten years from, and after the date of the passage of this act.'

"The use of the term: 'its successors or assigns,' does in part sustain this contention. It would be especially significant in this regard were it not for the fact that under the general railroad corporation act, as amended by acts 2 and 28 of the laws of 1897, railroads are given power to purchase the property of other railroad corporations otherwise than by judicial sale for the purpose of consolidating the two railroads into one system where the termini of both roads be not the same.

"Force and effect can, therefore, be given the words: 'Its successors and assigns' under the exemption law of 1899 without any implied repeal of so much of act 28 of the laws of 1897, as reserves from judicial sale of a railroad an exemption from taxation. That this was the legislative intent is evidenced by the fact that by the revision of 1901 no change was made in the phraseology of section 2 of the act approved March 16th, 1897, but the same was incorporated verbatim as a part of paragraph 864 of the Revised Statutes. There are two rules of construction which have an important bearing in the decision of this question. The first is, that repeals by implication are not favored, and the second is, that before an im-

munity from taxation may be claimed legislative authority for it must clearly appear and be free from doubt.

"Memphis Railroad Co. *vs.* Commissioners, 112 U. S., 617.

"Chesapeake & Ohio Railway Co. *vs.* Miller, 114 U. S., 176.

"I have reached the conclusion that the property of the Grand Canyon Railway Company is not exempt from taxation under existing law, for the reason that such exemption as its predecessor in interest, the Santa Fe & Grand Canyon Railway Company, may have had, did not pass to the plaintiff under and by the virtue of its purchase of the latter's property."

There remains to be considered only the suggestion that if there be doubt regarding the meaning of a territorial statute, this court will lean to the construction placed upon the same by the Supreme Court of the Territory.

This rule can have no application to this case, as in view of what we have shown, it cannot be reasonably claimed that any doubt exists of the legislative intent to deny exemption from taxation to companies purchasing railroad property and franchises at judicial sale. But should doubt be suggested, and the claim be made that it is such as should incline the court to lean to the construction given by the court below, then under the settled rule that doubt must be resolved against the exemption, the effect is the same as though the legislative intent to deny the exemption were unmistakable, and the ruling of the court below resolving the doubt in favor of the exemption was clearly wrong.

In any event, therefore, the judgment of the court below should be reversed.

Respectfully submitted,

WILLIAM C. PRENTISS,
ELIAS S. CLARK,
HENRY S. ASHURST,
Attorneys for Appellants.

APPENDIX.

No. 2.

AN ACT

Authorizing railroad companies to construct and extend their lines of railroad into or through other territories or states, and to purchase or lease other railroads, and to sell and lease railroads.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That any railroad company now or hereafter existing under the laws of this territory may construct and extend its line of railroad into or through any other territory or state, upon such terms and regulations as may be prescribed by the laws of such territory or state, and any such railroad company may purchase or lease the railroad constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this territory or any other territory or state, with all the rights, privileges and franchises thereto appertaining, or may buy the stock and bonds, or either, of any such company, and any railroad company now or hereafter existing under the laws of this territory, may, with the consent of the holders of two-thirds of its entire capital stock, given by a vote at a meeting, or in writing without a meeting, sell or lease its railroad franchises and appurtenances to any railroad corporation organized under the laws of this territory, or of any other territory or state; provided, however, that no purchase or lease under this act shall be entered into unless the line of the railroad so purchased or leased, or the railroad of the company whose stock shall be purchased, shall, when

constructed, form a branch of, or a continuous line with the railroad of such purchasing company, either by direct connection therewith, or through an intermediate line or lines, constructed or to be constructed, which such first mentioned railroad company shall own, lease or have the right by contract or otherwise, to use or operate. Provided, that upon the purchase of any railroad under the provisions of this act, the corporation purchasing the same shall assume all the debts, liabilities and obligations existing at the time of the purchase against the railroad so purchased.

SEC. 2. This act shall take effect and be in force from and after the date of its passage.

Approved February 8, 1897.

No. 3.

AN ACT

To authorize the formation of a corporation for the purpose of purchasing the railroad works and property of any railroad corporation, sold or to be sold, in the Territory of Arizona, by virtue of any mortgage or deed of trust, or pursuant to the judgment or decree of any court of competent jurisdiction, or by virtue of any execution upon such judgment.

SECTION 1. Whenever the railroad or works and property of any railroad corporation, created by or under any law of the United States, or the territory of Arizona, or the part of the railroad or works of any such corporation, situated in said territory of Arizona, shall be sold by virtue of a mortgage or deed of trust, or pursuant to the judgment or decree of any court in the United States of competent jurisdiction, or by virtue of any execution issued thereon, the purchasers at any such sale may acquire the property sold, together with any other property, and any franchises, rights, privileges and

immunities of such corporation in this territory or elsewhere.

Such purchasers may associate with themselves any number of persons, and with their associates may become a corporation, with power to own, operate, exercise and enjoy the properties, franchises, rights and immunities acquired by such purchasers, upon making, acknowledging and filing in the office of the secretary of the territory of Arizona, a certificate in which they shall describe by name and by reference to the charter or law under which it was organized, the corporation whose property or part of whose property they have acquired, and the court or courts by whose authority the sale was made, with the date of the judgment or decrees authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

SEC. 2. The name of the new corporation intended to be formed by the filing of such certificates.

SEC. 3. The maximum amount of its capital stock and the number of shares into which it is to be divided, and specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

SEC. 4. The number of directors, not less than three nor more than fifteen, who shall manage the affairs of the new corporation, and the names and postoffice addresses of the directors for the first year.

SEC. 5. Any plan or agreement which may have been entered into at or previous to the time of sale, in anticipation of the formation of the new corporation, and pursuant to which such purchase was made.

SEC. 6. Such new corporation shall thereupon be vested with, and shall be entitled to exercise and enjoy all the rights, privileges, franchises, immunities and powers which belong to or could be exercised by the corporation whose property, or part of whose property, was acquired by such purchasers as aforesaid, and may acquire, own, operate and enjoy all or any part of the property and works of such corporation in the territory of Arizona or elsewhere, and may conduct its busi-

ness generally under and in the manner provided in the charter of such last mentioned corporation, or under the laws relating thereto, with such variations in manner of form of organization as such purchasers and their associates may deem necessary and set forth in such certificate.

SEC. 7. That such corporation shall be entitled to possess and enjoy any and all rights, privileges, franchises, immunities and powers which are now given or may be hereafter given to any railroad company organized under the general laws of this territory, and the same being applicable thereto; and that such new corporation, when organized to purchase property of any railroad company, sold as aforesaid, may lease and purchase the railroad and other property of any railroad company organized under the laws of the United States, or of any other state or territory thereof, and thereafter operate and maintain the same, and shall have power to lease and sell its property, privileges, immunities and franchises to any railroad company or corporation.

SEC. 8. Nothing in this act contained, shall be deemed or construed to give to any corporation created under it, any exemption from taxation created by any existing or future exemption laws of the territory of Arizona.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved this 8th day of February, 1897.

No. 28.

An Act.

To amend an act entitled: "An act authorizing railroad companies to construct and extend their lines of railroad into or through other Territories or States, and to purchase or lease other railroads, and to sell and lease railroads." Approved February 8th, 1897.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

Section 1. That section 1 of an act entitled "An act authorizing railroad companies to construct and extend their lines of railroad into or through other territories or states, and to purchase or lease other railroads, and to sell and lease railroads," be and the same is hereby amended to read as follows:

Sec. 1. That any railroad company now or hereafter existing under the laws of this territory may construct and extend its line of railroad into or through any other territory or state, upon such terms and regulations as may be prescribed by the laws of such territory or state, and any such railroad company may purchase or lease the railroad constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this territory, or any other territory or state, with all the rights, privileges or franchises thereto appertaining, or may buy the stock and bonds, or either, of any such company; and any railroad company now or hereafter existing under the laws of this territory, may, with the consent of the holders of two-thirds of its entire capital stock, given by a vote at a meeting, or in writing without a meeting, sell or lease its railroad, franchises and appurtenances to any railroad corporation organized under the laws of this territory, or of any

other territory or state; provided, however, that no purchase or lease under this act shall be entered into, unless the line of railroad so purchased or leased, or the railroad of the company whose stock shall be purchased, shall, when constructed, form a branch of, or a continuous line with, the railroad of such purchasing company, either by direct connection therewith, or through an intermediate line or lines, constructed or to be constructed, which such first mentioned railroad company shall own, lease or have the right by contract or otherwise, to use or operate: Provided that upon the purchase of any railroad under the provisions of this act, the corporation purchasing the same shall assume all the debts, liabilities and obligations existing at the time of the purchase against the railroad so purchased: provided, also, that when a railroad is purchased under or by virtue of any sale under an execution or by virtue of any decree of any court, such purchase *shall be subject to such obligations as may be provided for by the judgment or decree of the court, and no other.*

SEC. 2. Whenever any railroad or part thereof, situate in this territory, or any railroad corporation organized under the laws of the United States, or of any state or territory, or of this territory, shall be sold by virtue of a judgment or decree of any court, or by virtue of any execution issued upon any judgment, such railroad or part thereof, together with any lands or other property, franchises, rights, immunities, exemptions and powers of such railroad company may be purchased at such sale, or from the immediate purchasers at such sale, by any corporation of this territory, or of any other state or territory, or of the United States, which may be authorized by its charter or by the laws of such state or territory or the United States, to purchase or acquire such, or similar property, and such purchasing corporation shall thereupon become vested with all the property purchased, together with all the franchises, rights, immunities, exemptions and powers belonging, or appertaining thereto or to the corporation whose railroad or other property may be purchased; and shall have

all the rights, franchises, powers, and immunities which are now given or which may be hereafter given to railroad companies organized under the laws of this territory, save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of this territory in reference to inducing the building of new railroads.

SEC. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the date of its passage.

Approved March the sixteenth, 1897.

No. 68.

AN ACT

To induce and encourage the construction of railroads within this territory.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within this territory, the capital stock, franchise, right of way, superstructures, improvements, betterments, telegraph lines and all other real, personal and mixed property used or necessary in the construction and operation of railroads, to be conducted as common carriers of freight and passengers, other than street and electric railroads, hereafter constructed in accordance with the provisions of this act, and whether owned or operated by a person or persons, association or railway corporation, his, their or its successors or assigns, be and the same is hereby declared to be exempt from any and all manner of taxation for and

during the period of ten years from and after the date of the passage of this act.

SEC. 2. Within six months after the passage of this act, any person or persons, association or railway corporation, shall file with the secretary of the territory a statement in writing, therein setting forth the general course and the terminal points of the railroad proposed to be constructed.

SEC. 3. Within six months after the filing of the statement in writing, provided in section 2 of this act, the construction of such railroad shall, in good faith, be commenced, and continued at the rate of not less than twenty-five miles for each and every period of twelve months thereafter.

SEC. 4. On the commencement of the construction of such proposed railroad, the contractor, or owner thereof shall file with the secretary of the territory a written statement setting forth the date and place of the commencement of the construction of said proposed railroad.

SEC. 5. Within sixty days after the expiration of each of said periods of twelve months, the owner of such railroad shall file with the secretary of the territory, a plat of the line of railroad constructed during the period of twelve months next preceding said sixty days.

SEC. 6. If any railroad built under the provisions of this act shall charge any higher rate of freight for carrying any of the products of this territory from one point in the territory to any other point in the territory than is charged for a like service on the same kind of products brought from some point outside of the territory, or shall fail to comply with any of the provisions of this act, it shall forfeit all the rights of exemption from taxation herein provided for.

SEC. 7. This act shall take effect, and be in force from and after its passage.

Approved March 16th, 1899.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 86.

J. R. TREAT, AS TREASURER AND EX OFFICIO TAX COLLECTOR OF THE COUNTY OF COCONINO, TERRITORY OF ARIZONA, ET AL., APPELLANTS,

vs.

GRAND CANYON RAILWAY COMPANY, APPELLEE.

SUPPLEMENTAL MEMORANDUM BRIEF FOR APPELLEE.

ROBERT DUNLAP,
Attorney for Appellee.

(21,748.)

IN THE

SUPREME COURT OF THE UNITED STATES.

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GRAND CANYON RAILWAY COMPANY, APPELLEE.

SUPPLEMENTAL MEMORANDUM BRIEF FOR APPELLEE.

In respect to appellants' contentions as to the revision of Arizona laws in 1901, upon or in respect to the Exemption Act of March 16, 1899, or to the Act No. 3, Laws of 1897, in which, however, the Supreme Court of the Territory took no stock, we suggest the following:

The Revised Statutes of Arizona, 1901, did not become effective until September 1, 1901. The

compilation was to be printed and published (pars. 4253 to 4258, Rev. Stat., 1901), and until that date no one would know what changes, if any, were made in the old laws thus revised.

Prior to that date, on July 18, 1901, the committee representing the bondholders had bid in all the property and rights of the predecessor of appellee sold at foreclosure sale, including the right of way acquired by the old company from Williams to the rim of the canyon and right to complete the railroad; and on August 10, 1901, they duly incorporated appellee for the purpose of taking over such property and rights and completing the construction commenced by its predecessor.

Appellee immediately proceeded with the construction and had practically completed the same before the Revised Statutes became effective—actually completing the construction a few days afterwards, on September 12, 1901, and thereafter filed the statement and map required by the act of 1899.

All requirements of the act of 1899 were fulfilled by appellee and its predecessor, and it would simply be a lack of good faith on the part of the Territory officials to afterwards juggle with the language and try to repudiate the accepted offer which its legislature has not even seen fit to attempt to modify or repeal.

But there is nothing in the revision of 1901 indicating an intent to change or affect the laws in question, but, on the contrary, there is a plain in-

tent to leave the Exemption Act of 1899 as it was and unaffected.

Page 1056, Rev. Stat., paragraph 4235, reads:

> "All acts of the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth legislative assemblies of the Territory of Arizona are hereby repealed *except* the following: Act number * * * 68, An act to induce and encourage the construction of railroads within this Territory, approved March 16, 1899" (page 1059 being the act in question).

This evinces a plain intent to leave the act of 1899 unaffected by anything in the revision.

But, further, on page 1059, paragraph 4237 (sec. 4) (Revision) it is provided:

> "No part of this act is retroactive."

This shows a clear intent that the revision shall not be construed retroactively or so as to affect rights which had attached by virtue of the new company succeeding the old and continuing and completing the work.

Again, page 1060, paragraph 4242 (sec. 9) (Revision) reads:

> "No action or proceeding commenced before this act takes effect and *no right accrued is affected by the provisions of this act*, but proceedings herein must conform to the requirements of the acts passed at this session of the legislature so far as such last-mentioned acts are applicable."

Again, page 1060, paragraph 4244 (sec. 11) provides:

> "The repeal of any act enumerated in this act does not revive any former law heretofore repealed, *nor does it affect any right already existing or accrued* or any action or proceeding already taken except as may be provided in some act passed at this session of the legislature, nor does it affect any private statute not expressly repealed."

Now section 2 of paragraph 864 (p. 337, Revision) is exactly the same as section 2 of Act No. 28, Laws 1897, which appellants admitted before the Supreme Court of the Territory was not applicable to this case. It does not profess to construe some other law not embraced in the revision. It simply provides that the general grant to such company of "all privileges and immunities" which might have been theretofore or thereafter granted to any other railroad company by the Territory should not by such terms include a grant of immunity or exemption from taxation. The exception is intended to qualify the preceding grant, but not to affect rights which might attach or accrue under a law not revised or not found under the general title "Railroad Corporations," of which paragraph 864 was a part.

Neither does paragraph 887 (p. 345, Revision) change or alter the meaning of section 8 of Act No. 3, Laws 1897, which it revises, for it will be seen that the preceding paragraphs 880 to 886 (pp.

343 to 345, Revision) are exactly the same as sections 1 to 7, inclusive, of Act No. 3, Laws 1897.

Paragraph 887 reads:

> "Nothing *in this chapter* contained shall be *deemed* or *construed to give* to any corporation created under it, any exemption from taxation created by any existing or future exemption laws of the Territory of Arizona."

This was simply construing what might be found and otherwise relied upon in *that chapter,* being chapter VII of the Revised Statutes, entitled "Railroad Corporations."

But none of the provisions of the Exemption Act of 1899 were embraced in that title of the Revised Statutes, and, as we have shown by a subsequent express provision, it was not repealed but remained unaffected.

Moreover, it might be stated that in "Appendix A" are separately collected and printed "Laws of a local or *special nature* passed by the twenty-first legislative assembly," being the session of 1901, in which will be found Act No. 10, to encourage the construction of railroads, &c. (pages 1448 and 1449). This indicates that legislation of the character of the act of 1899 was not intended to be embraced or covered by anything contained in chapter VII of the Revised Statutes, as such legislation was regarded as of a temporary and *special nature.*

Again, the revision was the work of a committee of lawyers appointed by the Governor. It was intended to be a compilation of the laws of a general and permanent nature for convenient reference. It was not intended to radically change the existing laws or affect those of a temporary operation or special nature.

It is not to be inferred that the legislature in revising and consolidating the statutes intended to change their effect unless an intention to do so is clearly expressed.

Logan *vs.* United States, 144 U. S., 302.
McDonald *vs.* Hovey, 110 U. S., 620.

A statute is not deemed repealed or affected by failure of the legislature to incorporate it into a revision.

Cape Girardeau County Court *vs.* Hill, 118 U. S., 68, 72.

The court may look to the original statutes in case of a revision or compilation.

The Conqueror, 166 U. S., 122.

While not necessary to determine in this case whether there was an irrepealable contract of exemption, inasmuch as the legislature did not attempt to repeal the act of 1899 or tax the property during the period of exemption which has now expired, nevertheless there was here every element of a completed contract.

The offer of exemption for the limited period of ten years was accepted within the short period of six months provided therefor and was not withdrawn, but all terms and conditions thereof were fully complied with by appellee and its predecessor. The Territory received the advantages it bargained for. The offer, while originally general, became special when accepted and complied with, like the general grant of a right of way to railroads found in the act of Congress of March 3, 1875 (Jamestown, &c., Rld. Co. *vs.* Jones, 177 U. S., 125). The owners of that railroad were obliged to maintain and operate the same as long as it existed. Such duty might be enforced by mandamus or a failure to operate would result in forfeiture of the exemption under the terms of the contract. There was a valuable consideration to support such a contract.

Freeport Water Co. *vs.* Freeport, 180 U. S., 608, and cases cited.

Wilmington Rld. *vs.* Reid, 13 Wall., 264, 266.

The original offer though general in its nature, upon acceptance and compliance became fixed, special, and definite, and with all the certainty essential for a definite agreement.

Piqua Bank *vs.* Knoop, 16 How., 380.

In Salt Company *vs.* East Saginaw, 13 Wall., 373, no time was fixed during which the bounty

was to be paid and the recipient was not bound to manufacture or produce, so such contract lacked mutuality and was terminable at will and was terminated by the State, by a specific repeal of the bounty act.

The court will be slow, however, to attribute lack of good faith in the legislature of Arizona. It will not distort or misconstrue plain language to bring about such a result.

The judgment of the Supreme Court of the Territory is just and in accordance with good morals and fair dealing and should be affirmed.

Respectfully submitted,

ROBERT DUNLAP,
Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 86

J. R. TREAT as Treasurer and Ex-Officio Tax Collector of the County of Coconino, Territory of Arizona, *et al.*,

Appellants,

vs.

GRAND CANYON RAILWAY COMPANY,

Appellee.

STATEMENT.

This is an appeal from a judgment of the Supreme Court of the Territory of Arizona affirming a decree of the District Court of Coconino County enjoining appellants, defendants in the District Court, from enforcing assessments for taxation made in 1906 against the railroad and other property of the Railway Company, the appellee, which was and is claimed by it to be exempt from taxation under an Act of the Territory approved March 16, 1899, to which reference is hereafter more particularly made.

The Grand Canyon Railway Company, appellee, filed its bill for injunction against the Treasurer

and Ex-Officio Tax Collector of Coconino County, claiming that its railroad had been constructed under the above Territorial Act and that the same, with the station grounds and buildings thereon, was exempt from taxation; nevertheless, the Territorial Board had assessed the railroad and the local assessor had assessed certain buildings, located upon the station grounds at the Rim of the Grand Canyon, as taxable and the tax collector of the county was proceeding to enforce the collection of taxes based thereon; that the assessments both of the local assessor and of the Territorial Board were illegal and created a cloud upon the title to the property of the Railway Company.

A demurrer to the amended complaint having been sustained by the lower court that decision, on appeal, was reversed by the Supreme Court with directions to overrule such demurrer. (*Grand Canyon R. R. Co.* v. *Treat, etc.*, 95 Pac., 187.) Thereafter the case was tried in the lower court without a jury upon the pleadings and admissions made during the trial and a decree was rendered in favor of the Railway Company. The defendants then appealed to the Supreme Court of the territory and as the only assignment of error which was definite enough under the practice in that territory was the overruling of the demurrer to the amended complaint, the court adhered to its former ruling in 95 Pacific, 187, and affirmed the judgment of the lower court. (Transcript, pp. 56, 57.) At the request of the Railway Company the court made elaborate findings of fact after having made findings requested by appellants. (Transcript, pp. 64 to 79.) This was in pursuance

of the Act approved April 7, 1874 (18 U. S. Statutes, part 3, p. 27).

Following are the pertinent facts as shown by the record:

The Santa Fe & Grand Canyon Railroad Company, the predecessor in interest to certain property and rights of the complainant, had been incorporated under the laws of Arizona to construct and operate a railroad from a point near Williams northerly in Coconino County to a point on the Rim of the Grand Canyon of the Colorado River in said county. On August 10, 1899, said Railroad Company executed, and on August 18, 1899, duly filed with the Secretary of the Territory, a statement in writing setting forth the general course and terminal points of the railroad proposed to be constructed by it, such statement being filed in pursuance of the provisions of the aforesaid Territorial Act No. 68, approved March 16, 1899, to encourage the construction of railroads in the territory. On October 22, 1899, construction of the railroad was commenced in good faith and during the year ending October 22, 1900, 56.34 miles had been constructed. The company then became embarrassed and suit was instituted by certain lienholders to foreclose their liens and sell the property. In said suit the trustee under a mortgage made by the Railroad Company intervened and sought foreclosure of the same. On June 8, 1901, a decree of foreclosure of the mortgage and other liens was entered and the property directed to be sold with all rights, franchises, privileges and immunities, including the immunity from taxation. Such sale was had July 18, 1901, and the railroad and rights were ac-

quired by a committee representing the bondholders who, in pursuance with a reorganization agreement, organized, or caused to be incorporated under Section 1 of an Act approved February 8, 1897, being Act No. 3, Session Laws of Arizona, 1897, the complainant, The Grand Canyon Railway Company. It was formed for the following purposes:

> "To acquire, own, maintain and operate the aforesaid railroad sold as aforesaid" (being the railroad of the Santa Fe & Grand Canyon Railroad Company) "and to construct and complete the same upon the route and right of way of the said the Santa Fe & Grand Canyon Railroad Company to the Grand Canyon of the Colorado River, and also to acquire, own, use and enjoy the railroad and appurtenances, franchises, rights, privileges, immunities and exemptions and all other properties acquired by the said purchasers at said sale."

Thereupon the new company, The Grand Canyon Railway Company, proceeded with the construction of the remainder of the proposed railroad and completed the same to its terminus at the Rim of the Grand Canyon on the 12th day of September, 1901, and on November 8, 1901, the new company filed in the office of the Secretary of the Territory of Arizona a map showing the portion of the said railroad constructed during the year ending October 22, 1901, which amounted to 10.7 miles and included the station at the Rim of the Canyon.

Ever since the completion of the road the Railway Company has maintained and operated the same as a common carrier of freight and passengers and has maintained upon its station grounds at the terminus of the road certain hotels, buildings, and other structures for the accommodation of travelers who visit

the Grand Canyon over said railroad, such buildings, structures and improvements being located upon and appurtenant to and constituting a part of the station grounds. The electric light and power plant on the station grounds was and is necessary to supply light, heat and power to the hotels and to the railroad station and other buildings used by complainant as a carrier. The hotels and buildings also assessed for taxation were constructed and are maintained and operated to promote and encourage travel over the railroad and are reasonably necessary and convenient for the accommodation of travelers visiting the Grand Canyon over said railroad and are necessary for use in connection with and in the operation of complainant's railroad. The court found that the Santa Fe & Grand Canyon Railroad Company and the Grand Canyon Railway Company (as the successor and assign of the Santa Fe & Grand Canyon Railroad Company) in all respects performed and complied with all the terms and provisions of Act No. 68, approved March 16, 1899. It thereupon held that the assessment for taxation of the railroad, franchises and right of way being 66.45 miles of railroad, with the station grounds and the assessment of the hotel and other buildings and property used in connection therewith and located upon the station grounds, was illegal, as such property was then exempt from taxation. (Transcript, pp. 64 to 79.)

The question, therefore, is whether the railroad whose construction was commenced by the Santa Fe & Grand Canyon Railroad Company and completed by complainant, was at the time exempt from taxation under the laws of the Territory.

ARGUMENT.

I.

THE RAILROAD CONSTRUCTED BY APPELLEE AND ITS PREDESESSOR WAS PLAINLY EXEMPTED UNDER TERRITORIAL ACT NO. 68, APPROVED MARCH 16, 1899, FROM ALL MANNER OF TAXATION FOR AND DURING THE PERIOD OF TEN YEARS AFTER THE PASSAGE OF THE ACT, REGARDLESS OF WHO MIGHT OWN OR OPERATE THE SAME DURING SUCH PERIOD.

Before considering the effect of any legislation had prior to the passage of the exemption Act it will conduce to clear thinking first to take up and consider the provisions of the Act under which the exemption is claimed in order to determine whether the railroad in the hands of appellee is embraced in the exemption or whether the appellee, as owner of the railroad, is fairly included within the terms of the Act.

The exemption is claimed under Act. No. 68, approved March 16, 1899, Session Laws of the 20th Legislative Assembly of the Territory of Arizona, pages 79 to 80, which is entitled: "An Act to Induce and Encourage the Construction of Railroads Within this Territory."

Section 1 provides:

> "That for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within this Territory, the capital stock, franchise, right of

way, superstructures, improvements, betterments, telegraph lines, and all other real, personal and mixed property used or necessary in the construction and operation of railroads, to be conducted as common carriers of freight and passengers, other than street and electric railroads, hereafter constructed in accordance with the provisions of this Act, and *whether owned or operated by a person or persons, association or railway corporation, his, their or its successors or assigns,* be and the same is hereby declared to be exempt from any and all manner of taxation for and during the period of ten years from and after the date of the passage of this Act."

Section 2 provides for filing with the Secretary of the Territory a statement in writing within six months after the passage of the Act by any person or railway corporation setting forth the general course and terminal points of the railroad proposed to be constructed.

Section 3 requires within six months after the filing of the above statement the construction of the railroad to be commenced in good faith and continued at the rate of not less than twenty-five miles for each period of twelve months.

Section 4 provides that on the commencement of construction for the proposed railroad "the contractor or owner thereof" shall file with the Secretary of the Territory a written statement setting forth the date and place of commencement of construction.

Section 5 provides that within sixty days after the expiration of each twelve months period "the owner of such railroad" shall file with the Secretary of the

Territory a plat of the line constructed during the period of twelve months next preceding said sixty days.

Section 6 provides for a forfeiture of the right of exemption in certain contingencies not here involved.

It was upon the faith and strength of this Act that the Santa Fe & Grand Canyon Railroad Company made its investment and commenced the construction of its railroad. Upon the faith and strength of this Act it secured credit, liens attached and its mortgage bonds were sold. Upon the faith and strength of this Act the new company which had been organized by the committee representing the bondholders completed the construction of the railroad and complied in all respects with the terms and provisions of the law.

The offer of the Territory was accepted on behalf of the Santa Fe & Grand Canyon Railroad Company, "*its successors and assigns,*" and upon compliance with the terms of said offer a completed contract for exemption was made between complainant and the Territory.

There was every element necessary to make a contract and ample consideration for such exemption. There was the risk of funds and the construction of a new railroad in the Territory with the resulting benefit to the people from the furnishing of quick and cheap mode of transportation, and the bringing into existence of new property which would become subject to taxation at the expiration of ten years. The Territory needed new additional railroads to facilitate the carrying on of its commerce and to as-

sist in the development of its resources, thus increasing its wealth. To induce such construction it offered the exemption.

The Act in question was in effect a declaration having the force of law as well as a contract by which the right to the exemption was secured to the original constructor or any person or corporation as might succeed in any manner to the corporate rights and ownership of the things exempted from taxation.

Referring to an exemption from taxation granted by a State to a bank organized under the law, this court said in *State Bank of Ohio* v. *Knoop,* 16 Howard, 382:

> "A contract between the State and individuals is as obligatory as any other contract. Until a State is lost to all sense of justice and propriety, she will scrupulously abide by her contracts, more scrupulously than she will exact their fulfillment by the opposite contracting party."

It will be observed that the exemption in question was not intended to be conferred upon some particular named corporation alone, nor that it should be merely a personal right of any named corporation, but the language used is as broad as could possibly be employed to show an intention that the exemption offered was one which would attach to the property which for the first time would be brought into existence in the Territory under such a law and be available in the hands of any owner thereof.

It is also clear that the exemption was intended for the benefit of any person or corporation who might at any time during the period of ten years

after the passage of the Act own or operate the railroad thus constructed. All property of every kind "used or necessary in the construction and operation of railroads" constructed in accordance with the provisions of the Act and "whether *owned or operated* by a person or persons, association or railway corporation, *his, their or its successors or assigns,*" should be exempt from all manner of taxation. It was a matter of indifference to the Legislature who might own or operate the property during that period of exemption. Not only might the corporation which originally constructed the railroad claim the exemption but it was plainly expressed that the exemption should attach whether the railroad was owned or operated by the company which constructed the same or "its successors or assigns."

As applied to a corporation broader language than the words "successors or assigns" could not be found to embrace or include every kind of corporation which might succeed in any manner possible to the ownership of the railroad so constructed and its franchises or which might operate the same in any manner or character.

The word "successors" used in the above Act plainly refers to successors in interest or ownership.

In *I. & G. N. R. R. Co.* v. *Smith County,* 65 Texas, 21, the exemption Act declared that:

> "The said railroad company and its successors and its and their capital stock, rights, franchises, railroads constructed and to be constructed pursuant to said Act of August 5, A. D. 1870, and this Act, rolling stock and all other property

> which now is or hereafter may be owned or possessed by said company, or its successors, in virtue of the said Act of August 5, 1870, is hereby exempted and released from all state, county, town, city, municipal and other taxes for a period of twenty-five years," etc.

It was held, in the first place, that the exemption attached to the property, and that it inured in favor of a corporation which purchased the property at a foreclosure sale as such purchaser would be the "successor," within the Act, of the original company to which the exemption had been granted.

That ruling was followed and approved in *I. & G. N. Ry. Co.* v. *State*, 75 Texas, 356; 12 S. W., 685, 688.

The word "assigns" used in connection with "successors" is even broader. In *Baily* v. *DeCrespigny*, Law Reports, 4 Queen's Bench (1869), on page 186, it is said:

> "The word 'assigns' is a term of well known signification, comprehending all those that take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law: Spencer's Case, 5 Rep., 16."

To the same effect see *Brown* v. *Crookston Agricultural Association*, 34 Minn., 545; 26 N. W., 907, 908.

It is quite plain from a reading of the Act in question that it was the intent of the Territorial Legislature that the exemption from taxation should attach to the railroad and other property which would be brought into existence in the territory on the faith of this law through investments in such

an enterprise, and that it was considered wholly immaterial who might be the owner of such property during the period of exemption. In other words the intention was that the exemption should attach to the railroad in whosoever hands or possession the same might be during the period specified.

In *State of New Jersey* v. *Wilson*, 7 Cranch., 164, the state in making some settlement with the Delaware Indians provided in an Act for the purchase of lands for the Indians and restrieting them from granting leases and making sales and enacted "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof in anywise notwithstanding." Subsequently the Indians obtained an Act of the legislature authorizing the sale of their land in New Jersey. The latter act contained no expression respecting the privilege of exemption from taxation above referred to. Wilson and others purchased the lands in question. Subsequently the legislature passed an Act repealing the section of the original Act which had granted the exemption. The lands were held exempt and the repealing Act held unconstitutional. Referring to the exemption Mr. Chief Justice Marshall said on page 167:

> "The privilege, though for the benefit of the Indians is annexed, by the terms which create it, to the land itself, not to their persons. It is for their advantage that it should be annexed to the land, because, in the event of a sale, on which alone the question would become material, the value would be enhanced by it. * * * The land has been sold, with the assent of the State,

with all its privileges and immunities. The purchaser succeeds, with the assent of the State, to all the rights of the Indians. He stands, with respect to this land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it."

No doubt statutes creating exemptions from taxation should be strictly construed and, in case of reasonable doubt as to whether it was intended by the legislature that the exemption should pass or attach, the doubt will be resolved in favor of the State. Yet such rule is a mere rule of construction to be applied by the court with other rules of construction in order to ascertain the legislative intent. The primary rule of construction is that the legislative intent is to be ascertained from the language used in the Act, reading the same in its usual and ordinary acceptation, and when the language is plain and unambiguous no rules of construction are necessary or should be applied. Certainly rules of construction should not be resorted to merely for the purpose of creating some doubt.

In *Citizens Bank of Louisiana* v. *Parker,* 192 U. S., 73, Mr. Justice McKenna, writing the opinion, said:

"The exemption of the charter includes a license tax. This, for the reason stated, must be regarded as part of the contract between the State and the bank. And in reaching that conclusion the rule requiring a strict construction of statutes exempting property from taxation has not been infringed. We recognize the force and salutary character of the rule, but it must not be misunderstood. It is not a substitute for all other rules. It does not mean that whenever a controversy is or can be raised of the meaning

of a statute, ambiguity occurs, which immediately and inevitably determines the interpretation of the statute. The decisive simplicity of such effect is very striking. It conveniently removes all difficulties from judgment in many cases of controverted construction of laws. But we cannot concede such effect to the rule, nor is such effect necessary in order to make the rule useful and, at times, decisive. *Its proper office is to help solve ambiguities, not to compel an immediate surrender to them—to be an element in decision, and effective, maybe, when all other tests of meaning have been employed which experience has afforded, and which it is the duty of courts to consider when rights are claimed under a statute.* Will courts ever be exempt, or have they ever been exempt from that duty? Has skill in the use of language ever been so universal, or will it ever be so universal as to make indubitably clear the meaning of legislation? Has forecast of events ever been so sure, or will it ever be so sure, as to make inevitably certain all the objects contemplated by a statute? We think not, and there never will be a time in which judicial interpretation of laws will not be invoked, and it cannot be omitted, because a doubt may be asserted concerning the meaning of the legislature. We repeat, it is the judicial duty to ascertain if doubt exists."

In all cases decided by this court in which the claim of exemption from taxation by a particular company was denied it was found that upon a reading of the statute under which the exemption was claimed there was a reasonable doubt as to the intent of the legislature. Indeed, in such cases the exemption was claimed by inference or implication.

In some cases the exemption was granted in terms to a particular corporation, the statute providing that *its capital stock,* property, etc., should be exempt

from taxation. The claim of exemption would be made by a purchaser under a foreclosure sale. The statute, however, in such cases contained no words of assignability or transfer. Upon the plain reading of such a statute the exemption inured only in favor of the particular corporation named. It was personal to such corporation. That was the case of *Memphis & Little Rock R. R. Co.* v. *Railroad Commissioners*, 112 U. S., 609, in which the exemption was claimed by a purchaser under some inference or implication. Mr. Justice Mathews, referring to former decisions, said on page 617:

> "According to the principle of those decisions, the exemption from taxation must be construed to have been the personal privilege of the very corporation specifically referred to, and to have perished with that, unless the express and clear intention of the law requires the exemption to pass as a continuing franchise to a successor."

In other cases it appears that the legislature had in plain terms granted in the charter of a particular railroad company an exemption of its property from taxation and in a subsequent law or charter to another corporation had provided that such other corporation should have the same "privileges and franchises" as the preceding corporation. Here it was contended that the same exemption from taxation was conferred upon the later corporation under the words "privileges and franchises." This court, however, looking at the context of the particular statute under which the exemption was claimed, in some cases found that the exemption was intended to be conferred or granted by the above words, and in other cases that it was not. The cases are col-

lected and commented upon in the opinion of Mr. Justice Moody in *Rochester Railway* v. *Rochester*, 205 U. S., 236.

An exemption or immunity from a governmental obligation or duty could hardly be included within the terms "privileges and franchises" of a corporation as ordinarily understood because the word "immunity" or "exemption" would be more appropriate. Where the exemption was denied this court did not feel at liberty to extend the meaning of the words "privilege and franchises" as including an exemption or immunity where the context did not show an express intent of the legislature to make such inclusion.

The reason for holding that an exemption claimed as a matter of contract right is not to be deemed assignable or transferable without express words to that effect is based upon the general rule that contracts involving personal trust or confidence are not assignable for obvious and well known reasons unless the parties thereto have in terms so agreed. The reason is well stated in the opinion of Mr. Justice Moody in *Rochester Railway* v. *Rochester*, 205 U. S., 236, which involved a claim of immunity from the exercise of governmental power other than that of taxation. On pages 247 and 248 he said:

> "This court has frequently had occasion to decide whether an immunity from the exercise of governmental power which has been granted by contract to one, has by legislative authority been vested in or transferred to another, and in the decisions certain general principles, which control in the determination of the case at bar, have been established. Although the obligations

of such a contract are protected by the Federal Constitution from impairment by the State, the contract itself is not property which, as such, can be transferred by the owner to another, because, being personal to him with whom it was made, it is incapable of assignment. The person with whom the contract is made by the State may continue to enjoy its benefits unmolested as long as he chooses, but there his rights end, and he cannot by any form of conveyance transmit the contract or its benefits, to a successor. *Morgan* v. *Louisiana*, 93 U. S., 217; *Wilson* v. *Gaines*, 103 U. S., 417; *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S., 244; *Picard* v. *Tennessee, etc.*, 130 U. S., 637; *St. Louis, etc., Co.* v. *Gill*, 156 U. S., 649; *Norfolk & Western R. R.* v. *Pendleton*, 156 U. S., 667. But the State, by virtue of the same power which created the original contract of exemption, may either by the same law, or by subsequent laws, authorize or direct the transfer of the exemption to a successor in title. In that case the exemption is taken not by reason of the inherent right of the original holder to assign it, but by the action of the State in authorizing or directing its transfer. As in determining whether a contract of exemption from a governmental power was granted, so in determining whether its transfer to another was authorized or directed every doubt is resolved in favor of the continuance of the governmental power and clear and unmistakable evidence of the intent to part with it is required."

The legislature of Arizona, however, in the Act in question clearly and unmistakably expressed its intent that the exemption from taxation for a limited period should attach to the railroad so constructed and property used in connection therewith and that it might be claimed by anybody who during such period should *own or operate* such railroad

whether he was the original constructor and owner of the same or the successor or assign of such party. The Territory was interested in having as much railroad constructed therein as possible and it was desirous of inducing the construction of as much railroad as possible within a given time. The exemption would attach each year to the part constructed during such year or prior thereto. In the case at bar the road was partially constructed by the original company, but it was completed by the complainant. That was done in accordance with the obvious intent or desire of the legislature.

The Act in question being a law as well as a contract, under which it would be expected any one might act, should be construed according to its obvious sense. Investments were made upon the strength of it. It should not be captiously construed so as to defeat the hope held out by its plain terms. They are double dealers

> "That keep the word of promise to our ear
> And break it to our hope."

It is an attitude a State or Territory should not assume.

II.

THE PRIOR TERRITORIAL ACT NO. 3, APPROVED FEBRUARY 8, 1897, UNDER ONE SECTION OF WHICH COMPLAINANT WAS ORGANIZED, DID NOT, AS IT COULD NOT, PREVENT THE EXEMPTION ATTACHING UNDER THE SUBSEQUENT STATUTE OF 1899.

It was contended that as complainant was organized under Act No. 3, approved February 8, 1897,

Acts of the Territory of Arizona, pages 5 and 6, that there is something in that prior law which prevented the exemption plainly given by the subsequent Act of 1899 from attaching in favor of complainant.

Complainant was organized in pursuance of Section 1 of said Act No. 3 and complied with the provisions of Sections 2, 3, 4 and 5 concerning what should be stated in its Certificate of Incorporation.

Section 1 provided that whenever a railroad of any railroad corporation situated in the Territory should be sold by virtue of a mortgage or deed of trust or pursuant to the judgment or decree of any court in the United States of competent jurisdiction, or by virtue of any execution issued thereon, the purchasers at the sale might acquire the property sold and "any franchises and *immunities* of such corporation in this Territory or elsewhere." That the purchasers might associate with themselves other persons and become a corporation "with power to own, operate, exercise and enjoy the properties, franchises, rights and immunities acquried by such purchasers," on filing with the Secretary of the Territory a certificate, etc.

Section 6 then provided that: "Such new corporation shall thereupon be vested with and shall be entitled to exercise and enjoy *all the rights, privileges, franchises, immunities and powers which belong to or could be exercised by the corporation whose property or part of whose property was acquired by such purchasers," etc.*

Section 7 also provided that: "Such corporation shall be entitled to possess and enjoy any and *all rights, privileges, franchises, immunities and powers* which are now given or may be hereafter given to any railroad company organized under the general laws of this Territory and

> the same being applicable thereto; * * * and shall have power to lease and sell its property, privileges, immunities and franchises to any railroad company or corporation."
>
> Section 8 then provided that: "Nothing in this Act contained shall be deemed or construed to give to any corporation created under it any exemption from taxation created by any existing or future exemption laws of the Territory of Arizona."

It is claimed that Section 8, above, would prevent an exemption from attaching under the subsequent Act of 1899. A plain reading of the language of Section 8 indicates no such intent. The language is plain, "*Nothing in this Act contained* shall be *deemed* or *construed to give* to any corporation created under it any exemption," etc. Language could hardly be made plainer to show that this section was intended merely to limit some meaning which might be attached to some other provision found in that Act and that any such other provision should not be construed or deemed as giving the exemption so far as that Act was concerned. The reason for that provision is obvious.

Under the preceding Sections 6 and 7, the corporation created under the first section, was invested with "all rights, privileges, franchises, immunities and powers" given or that might thereafter be given to any railroad company organized under the general laws of the Territory or which might have belonged to the corporation whose property was purchased. The word "immunities" used in those sections would undoubtedly have conferred an immunity from taxation which any corporation organized under the laws of the Territory prior thereto or

thereafter might be entitled to on compliance with some exemption statute. And although the immunity from taxation granted under any prior or subsequent law of the Territory might have been construed to be personal to the particular corporation whose railroad was sold, yet these words would have passed or been deemed to have given to the purchasers or the new corporation the same immunity, unless the meaning of those words was subsequently qualified. Section 8 was, therefore, deemed necessary to prevent any *construction* of the word "immunities" found in the preceding sections from including or giving an immunity from taxation where such immunity would, under some exemption law, be construed or deemed as personal to some other corporation, as the one whose property might be sold.

Thus in Act No. 41, approved March 16, 1891, Acts of Arizona, 1891, pages 61, 62, that Statute gave an exemption for twenty years to any person or corporation which should construct a railroad and comply with the terms of the Act. It, however, contained no indication that the exemption was transferable or assignable and would, therefore, be held as giving an exemption personal only to the company which should construct the railroad. Yet if such railroad were afterwards sold the purchasers organizing under Act No. 3 of the Laws of 1897, would have been given an exemption from taxation under Section 6 or 7 were it not for the precautionary and limiting provision of Section 8.

Again the mortgage of the Atlantic & Pacific Railroad Company was being foreclosed in the Territorial courts. Its right of way, as well as station

grounds and superstructures, as held by this court in *New Mexico* v. *United States Trust Company,* 172 U. S., 171, was exempt from taxation. It might have been contended that the exemption in that case was personal and yet should the purchasers have taken advantage of Act No. 3 of the Laws of 1897 and organized a corporation, it was feared that they would claim the exemption under Sections 6 or 7 as given under the word "immunities," unless Section 8 were also enacted limiting the meaning of the general language found in Sections 6 and 7.

Again, on some subsequent legislature granting an exemption which would be held to be purely personal to a particular corporation, should its railroad be subsequently sold, the purchasers by organizing under Act No. 3 would have been able to claim that the word "immunities" found in Section 7 gave them the same exemption were it not for the explanatory provision found in Section 8.

If it were intended to prevent any corporation organized under Act No. 3 from claiming that an exemption was given to it under a subsequent law, appropriate language would have been used to express that idea.

The Railway Company does not claim that its exemption is given to it or attaches to its property by virtue of anything contained in Act No. 3 of the Laws of 1897. It simply claims that the exemption in question attached under a law passed by a subsequent legislature.

It is quite plain that the legislature of 1897 could not tie the hands of a subsequent legislature or

prevent such subsequent legislature from giving an exemption or repealing *pro tanto* if necessary, any provisions of Section 8 of Act No. 3 of the Session Laws of 1897 which might be construed to be in conflict with a subsequent law. If the legislature of 1897 intended by Section 8 of Act No. 3 to prevent a subsequent legislature from giving or granting an exemption from taxation such section would have been nugatory and void.

In 26 American & English Encyclopedia of Law, Second Edition, page 758, it is said:

> "In respect, however, to general laws limiting the effect of repealing statutes, it has been said that the legislature cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation on existing statutes." Citing *Monegon* v. *People*, 55 N. Y., 613.

In 1 Blackstone's Commentaries, 90, it is said that "Acts of parliament derogatory from the power of subsequent parliaments bind not."

In *Philadelphia* v. *Fox*, 64 Pa. St., 169, 181, the court said:

> "If the legislature were to attempt to erect a municipality with a special provision that its charter should be unchanged or irrevocable, such provision would be a nullity."

See:

Horton v. *City Council*, 61 Atl., 759, 763.
Gunther v. *Huneke*, ... Wash., ...; 108 Pac., 1079.

That would seem to be self evident. The only apparent exception would seem to be that one legis-

lature may bind another by creating contract or vested rights, which would be protected by the constitutional limitation.

So also statutory rules of construction are but advisory upon the courts in ascertaining the intent of the legislature as expressed in subsequent laws. It is the duty of the courts to ascertain the legislative intent and to give effect to such intent however the same may be ascertained.

Friend v. *Levy*, 76 Ohio St., 26; 80 N. E., 1036.

Gunther v. *Huncke, supra.*

Again, it is quite clear that if Section 8 of Act No. 3, Acts of 1897, were construed to prevent the attaching of the exemption from taxation in the hands of the "successors or assigns" of the original constructor of the railroad in question, yet as that railroad was constructed under the subsequent law of 1899, which law very plainly attached the exemption to the property in the hands of "successors and assigns," then Section 8 so construed would be in direct conflict with the provisions of the subsequent law and would therefore be *pro tanto* repealed. The two provisions could not stand. The one would be directly opposed to the other and the later statute would prevail. See *Thomas, Sheriff*, v. *Evans*, 73 Ohio St., 140; 76 N. E., 862.

In Sutherland on Statutory Construction, Section 136, it is said:

> "Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the

> same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. The legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes."

On the whole, Section 8, Act No. 3, must be read according to its plain meaning as preventing any claim that an exemption from taxation was given by any provision of that Act alone. It was not intended to prevent any exemption being given by some subsequent legislature. The language is too plain: "Nothing *in this Act contained* shall be *deemed* or *construed* to *give*," etc.

III.

NEITHER WOULD ANY CONSTRUCTION OF TERRITORIAL ACT NO. 28, APPROVED MARCH 16, 1897, PREVENT THE EXEMPTION FROM ATTACHING UNDER A SUBSEQUENT LAW. MOREOVER THAT ACT IN ANY EVENT WOULD NOT BE APPLICABLE TO COMPLAINANT AND ITS CONSIDERATION WAS ABANDONED IN THE SUPREME COURT OF THE TERRITORY BY THE TERRITORIAL REPRESENTATIVES.

Act No. 28, page 65, of the 19th legislature, approved March 16, 1897, was amendatory of Act No. 2, approved February 8, 1897, of the same legislature. On the hearing of this case in the Supreme Court of the Territory, *Grand Canyon Railway Company* v. *Treat*, 95 Pac., 187, the Territory with-

drew any claim of the applicability of either of these Acts, the court saying on page 192:

> "Counsel have referred at length to the grants and limitations of Act No. 2, page 4, and Act No. 28, page 65, of the 19th legislature, but have at last agreed that these Acts are not applicable to this case."

The reason is obvious. Complainant did not acquire or assert any rights under the amendatory Act No. 28, Laws of 1897. Section 2 is the only pertinent section necessary to be considered. It provides that whenever any railroad in the Territory should be sold by virtue of a judgment or decree of any court, or by virtue of any execution issued upon any judgment, such railroad with "the franchises, rights, immunities, exemptions and powers of such railroad company may be purchased at such sale or from the immediate purchasers at such sale by any corporation of this Territory or of any other State or Territory of the United States which may be authorized by its charter or by the laws of such State or Territory or of the United States to purchase or acquire such or similar property." That merely confers authority upon any other corporation of the Territory or upon a foreign corporation which has requisite authority to purchase the railroad sold. It gives assent of the Territory to the transfer or sale. It does not apply to the case covered by Act No. 3 of the same session which authorizes the individual purchasers to incorporate. The terms are somewhat different.

Section 2 of Act No. 28 then provides:

> "Such purchasing corporation shall thereupon become vested with all the property pur-

chased together with all the franchises, rights, *immunities, exemptions* and powers belonging or appertaining thereto, or to the corporation whose railroad or other property may be purchased and shall have all the rights, franchises, powers and immunities which are now given or which may be hereafter given to railroad companies organized under the laws of this Territory save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of this Territory in reference to inducing the building of new railroads."

The same argument is applicable to this provision as to the provisions of Act No. 3, heretofore set forth. The concluding exception was intended to prevent any claim that anything in the preceding clauses, and especially the words "immunities" and "exemptions," should be regarded as conferring an exemption from taxation in favor of the purchasing company which exemption might in a particular case be regarded as personal to the company whose railroad was sold, and which would not otherwise pass.

The argument under Act No. 3 is also pertinent here, that the Legislature of 1897 could not control or fix the policy of the Legislature of 1899, and if the provision above referred to were intended to prevent an exemption from attaching under a subsequent law which was plainly granted thereunder, the above provision would be nugatory and, indeed, would be held to be repealed *pro tanto* by such subsequent law which did in terms grant the exemption to the "successors and assigns."

However, as it was conceded in the Supreme Court of the Territory that Act No. 28 of the Laws of

1897 was not applicable to this case, a contrary contention would not certainly be permissible on appeal to this court.

IV.

IF THERE WAS ANY DOUBT AS TO THE MEANING OF THE RESPECTIVE ACTS OF 1897 AND 1899 THIS COURT WOULD LEAN TO THE CONSTRUCTION PLACED UPON THE SAME BY THE SUPREME COURT OF THE TERRITORY.

In *English* v. *Territory of Arizona,* 214 U. S., 359, this court said:

> "Appellants contest the construction made by the Supreme Court of the Territory, but we have said that, unless in a case of manifest error, this court will not disturb a decision of the Supreme Court of a Territory construing a local statute."

See also:

Copper Queen Mining Co. v. *Arizona Board,* 206 U. S., 474.

Crary v. *Dye,* 208 U. S., 515.

Albright v. *Sandoval,* 216 U. S., 331.

V.

THE HOTELS AND OTHER BUILDINGS ON THE STATION GROUNDS AT THE RIM OF THE CANYON WERE ALSO EXEMPT.

Act No. 68, approved March 16, 1899, exempts "the *capital stock,* franchise, right of way, *superstructures,* improvements, betterments, telegraph lines, *and all other real, personal and mixed property used*

or necessary in the construction and operation of railroads to be conducted as common carriers of freight and passengers."

The court found that these buildings were necessary in the operation of this railroad as a common carrier. This railroad was constructed mainly to accommodate the tourist travel. It was built to enable parties to visit the Grand Canyon of the Colorado River. It was built in a wilderness where there were no accommodations for such travelers. To operate the road with any degree of success it would be necessary for the railroad company to establish hotels at the Rim of the Canyon where travelers over the railroad could be adequately accommodated. Without such accommodations or convenience the road could not be operated with any degree of success or utility.

A railroad organized under the Laws of Arizona has power and authority "to erect and maintain all necessary and convenient buildings, stations, depots, watering-places, fixtures and machinery, for the accommodation and use of their passengers, freight and business, and to obtain and hold by purchase, donation or condemnation as hereinafter provided, lands and other property necessary therefor."

See paragraph 9, Section 859, Chapter 7, page 333, Revised Statutes of Arizona, 1901.

Under a similar provision this court held in *Jacksonville, etc., Ry. Co.* v. *Hooper,* 160 U. S., 514, that a railroad company was duly authorized to lease and maintain a summer hotel at its seaside terminus

as that would be incident to its business as a common carrier.

In *Abraham* v. *Oregon & C. R. Co.*, 41 Oregon, 550; 69 Pac., 653, held, where land is granted to a railroad company for all legitimate railroad and depot purposes, and a hotel and eating house is erected on the land as an incident to the operation of the road, that accommodations granted to the general public apart from strictly railroad business would not render the use of the land repugnant to the grant; that the construction of the hotel and eating house on the land was a use of it for a legitimate railroad purpose.

The remark of Mr. Commissioner Prouty in *American Asphalt Association* v. *Uintah Railway Co.*, 13 I. C. C. Reports, on page 205, is pertinent:

> "A considerable amount of revenue is derived by this company from its passenger service and it must be evident that no passenger business could be done in this desert country without the provision of some means of caring for passengers at the hands of this railroad."

So where a statute exempts from taxation, "track, right of way, depot grounds, buildings, machine shops, rolling stock and all other property necessarily used in operating any railroad," it has been frequently held, that a hotel built and operated principally for the accommodation of railway travel is also exempt, although it may appear that it is used to some extent to accommodate other parties.

See *C. M. & St. P. Ry. Co.* v. *Supervisors*, 48 Wisconsin, 666; 5 N. W., 3. In the opinion it is said:

"That the erection and maintenance by rail-

way companies, at suitable places along the lines of their roads and contiguous thereto, of station houses or buildings in which passengers may be properly and comfortably supplied and entertained with food and lodging as at hotels, is a necessity of modern railway travel."

In Cooley on Taxation, Second Edition, page 214, Note, it is said:

"An exemption from taxation of property 'necessarily used in operating a railroad' is held to apply to an inn used exclusively by persons arriving and departing on the railroad."

In *State* v. *B. & O. R. R. Co.*, 48 Md., 49, it is held that, while the railroad company was not authorized by its charter to build and conduct hotels for the accommodation of the public generally, hotels or buildings for the accommodation of passengers over its line are necessary to its business and are, therefore, within its charter exemption.

See also:

12 American & English Encyclopedia of Law (Second Edition), 263.

A grain elevator was held exempt as "property necessarily used in operating the road" in *C., M. & St. P., M. & O. R. R. Co.* v. *Rayfield County*, 87 Wisconsin, 188; 58 N. W., 245.

Also coal docks built by the railroad company although leased to a private company were held exempt under the same statute in that case.

In *Auditor General* v. *Flint, P. & M. R. R. Co.*, 114 Mich., 682; 72 N. W., 992, it was held that a piece of land through which railroad tracks ran, and used constantly by the company in originating and ship-

ping freight, was "necessary in the proper operation of the road," and this notwithstanding the fact that the land was occupied by two lumber firms who paid no rent, as their occupancy was convenient to the railroad company and their entire lumber was shipped over the road.

In view of the general power conferred on Arizona railroads to construct and maintain "*convenient buildings * * * for the accommodation and use of their passengers,*" etc., it is evident that the broad terms of Act No. 68, Laws of 1899, plainly included the hotels and other buildings as the "superstructures * * * used or necessary in the construction and operation of railroad to be conducted as common carriers of freight and passengers."

The Supreme Court of the Territory found that they were used and necessary in the operation of this railroad. The station grounds are unquestionably exempt. The buildings are inseparably attached to and constitute a part of the same.

New Mexico v. *United States Trust Co.*, 172 U. S., 171 and 185.

There is no method provided for segregating or separately assessing and taxing the buildings.

Indeed an exemption of the "capital stock" would embrace exemption of all the property or capital of the corporation.

Mayor of Baltimore v. *B. & O. Rld. Co.*, 6 Gill., 288, 296.

Osborn v. *N. Y. & N. H. Rld. Co.*, 40 Conn., 491.

In *Mayor, etc., of Baltimore* v. *B. & O. R. R. Co., supra,* the charter of the railroad company declared that all the shares of the capital stock should be exempt from taxation. Held, that this included the specific property of the corporation as well, as the latter was a component part of the value of the stock. On page 296 it is said:

> "The design contemplated by the legislature in the insertion of this clause of exemption in the Act of Assembly, was to confer a certain substantial, not a nominal benefit, on the stockholders, and to induce capitalists to risk their money in a novel and hazardous enterprise. To impute to the legisature, in the case before us, an intention to exempt the shares of the stock from taxation, and at the same time to reserve the right to tax everything which constituted it a stock, and gave to it its value, would be gratuitously to cast an imputation upon the legislature, inconsistent with every principle of judicial courtesy. If, as has been contended, the legislature designed to retain the right of taxation upon the property of the company, other than its franchise, it would have expressed its intention in terms about which there would have been no controversy; it would have limited its immunity to the franchise only, not to the shares of stock, which embraces every species of property owned by the company."

VI.

THE ASSESSMENT FOR TAXATION OF THE HOTEL AND OTHER BUILDINGS ON THE STATION GROUNDS BY THE LOCAL ASSESSOR WAS UNAUTHORIZED AND VOID.

It would seem under Section 3858, pages 965 and 966, Revised Statutes of Arizona, 1901, that the Territorial Board of Equalization is required to assess all the railroads including right of way, depots, station grounds, buildings, etc.

The buildings in question are inseparably connected with the station grounds and constitute a part thereof. They cannot be segregated and assessed for taxation by the local county assessor. It would seem that on this ground also the assessment of such buildings complained of was void.

VII.

UNDER THE RECORD COMPLAINANTS CANNOT RAISE ANY QUESTION AS TO THE HOTELS AND OTHER BUILDINGS IF THE RAILROAD ITSELF BE HELD TO BE EXEMPT UNDER THE LAW.

In the Supreme Court of the Territory no briefs were filed on the last appeal and the only assignments of error were those filed in the lower court found on record, page 41. The first was alleged error in overruling defendant's demurrer to complainant's complaint "because said complaint does not state

facts sufficient to constitute a cause of action nor to entitle it to any relief whatever."

The second was alleged error in overruling the defendant's motion for a new trial.

The third, alleged error in rendering judgment against defendant's.

The two latter assignments were properly held to be too indefinite to enable the Supreme Court of the Territory to consider them.

The first assignment was disposed of by the former decision in 95 Pacific, 187.

If the railroad itself was exempt from taxation under the law, then undoubtedly the complaint filed being good in that respect was good against the general demurrer. On such question arising upon a general demurrer it would be unimportant to consider whether complainant had also asked for or was entitled to relief in respect to some other property, such as the hotel and other buildings.

St. Louis & S. F. Rld. Co. v. *Allen,* 181 Fed., 711, and cases cited on page 723.

In fairness to the Supreme Court of the Territory it would seem plain that the only thing for this Court to consider would be whether there was error in overruling the general demurrer to plaintiff's complaint.

San Pedro, etc., Co. v. *U. S.,* 146 U. S., 120 and 136.

The Vaughan and Telegraph, 14 Wall., 258, 265 and 266.

The assignments of error filed in the Supreme Court of the Territory on the taking of an appeal to this Court are even more indefinite and are too general for consideration.

Respectfully submitted,

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GARDINER LATHROP,
Counsel.

APPENDIX.

Session Laws of 1899.

No. 68.

An Act to induce and encourage the construction of railroads within this territory.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

Section 1. That for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within this territory, the capital stock, franchise, right of way, superstructures, improvements, betterments, telegraph lines and all other real, personal and mixed property used or necessary in the construction and operation of railroads, to be conducted as common carriers of freight and passengers, other than street and electric railroads, hereafter constructed in accordance with the provisions of this act, and whether owned or operated by a person or persons, association or railway corporation, his, their or its successors or assigns, be and the same is hereby declared to be exempt from any and all manner of taxation for and during the period of ten years from and after the date of the passage of this act.

Sec. 2. Within six months after the passage of this act, any person or persons, association or railway corporation, shall file with the secretary of the territory a statement in writing, therein setting

forth the general course and the terminal points of the railroad proposed to be constructed.

Sec. 3. Within six months after the filing of the statement in writing, provided in section 2 of this act, the construction of such railroad shall, in good faith, be commenced, and continued at the rate of not less than twenty-five miles for each and every period of twelve months thereafter.

Sec. 4. On the commencement of the construction of such proposed railroad, the contractor, or owner thereof shall file with the secretary of the territory a written statement setting forth the date and place of the commencement of the construction of said proposed railroad.

Sec. 5. Within sixty days after the expiration of each of said periods of twelve months, the owner of such railroad shall file with the secretary of the territory, a plat of the line of railroad constructed during the period of twelve months next preceding said sixty days.

Sec. 6. If any railroad built under the provisions of this act shall charge any higher rate of freight for carrying any of the products of this territory from one point in the territory to any other point in the territory than is charged for a like service on the same kind of products brought from some point outside of the territory, or shall fail to comply with any of the provisions of this act, it shall forfeit all the rights of exemption from taxation herein provided for.

Sec. 7. This act shall take effect, and be in force from and after its passage.

Approved March 16th, 1899.

Session Laws of 1897.

No. 3.

An Act to Authorize the formation of a Corporation for the purpose of purchasing the Railroad Works and property of any Railroad Corporation, sold or to be sold, in the Territory of Arizona, by virtue of any mortgage or deed of trust, or pursuant to the judgment or decree of any court of competent jurisdiction, or by virtue of any execution upon such judgment.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

Section 1. Whenever the railroad or works and property of any railroad corporation, created by or under any law of the United States, or the territory of Arizona, or the part of the railroad or works of any such corporation, situated in said territory of Arizona, shall be sold by virtue of a mortgage or deed of trust, or pursuant to the judgment or decree of any court in the United States of competent jurisdiction, or by virtue of any execution issued thereon, the purchasers at any such sale may acquire the property sold, together with any other property, and any franchises, rights, privileges and immunities of such corporation in this territory or elsewhere.

Such purchasers may associate with themselves any number of persons, and with their associates may become a corporation, with power to own, operate, exercise and enjoy the properties, franchises,

rights and immunities acquired by such purchasers, upon making, acknowledging and filing in the office of the secretary of the territory of Arizona, a certificate in which they shall describe by name and by reference to the charter or law under which it was organized, the corporation whose property or part of whose property they have acquired, and the court or courts by whose authority the sale was made, with the date of the judgment or decrees authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

Sec. 2. The name of the new corporation intended to be formed by the filing of such certificates.

Sec. 3. The maximum amount of its capital stock and the number of shares into which it is to be divided, and specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

Sec. 4. The number of directors, not less than three nor more than fifteen, who shall manage the affairs of the new corporation and the names and postoffice addresses of the directors for the first year.

Sec. 5. Any plan or agreement which may have been entered into at or previous to the time of sale, in anticipation of the formation of the new corporation, and pursuant to which such purchase was made.

Sec. 6. Such new corporation shall thereupon be vested with, and shall be entitled to exercise and enjoy all the rights, privileges, franchises, immuni-

ties and powers which belong to or could be exercised by the corporation whose property, or part of whose property, was acquired by such purchasers as aforesaid, and may acquire, own, operate and enjoy all or any part of the property and works of such corporation in the territory of Arizona or elsewhere, and may conduct its business generally under and in the manner provided in the charter of such last mentioned corporation, or under the laws relating thereto, with such variations in manner or form of organization as such purchasers and their associates may deem necessary and set forth in such certificate.

Sec. 7. That such corporation shall be entitled to possess and enjoy any and all rights, privileges, franchises, immunities and powers which are now given or may be hereafter given to any railroad company organized under the general laws of this territory, and the same being applicable thereto; and that such new corporation, when organized to purchase property of any railroad company, sold as aforesaid, may lease and purchase the railroad and other property of any railroad company organized under the laws of the United States, or of any other state or territoy thereof, and thereafter operate and maintain the same, and shall have power to lease and sell its property, privileges, immunities and franchises to any railroad company or corporation.

Sec. 8. Nothing in this act contained, shall be deemed or construed to give to any corporation created under it, any exemption from taxation

created by any existing or future exemption laws of the territory of Arizona.

Sec. 9. This act shall take effect and be in force from and after its passage.

Approved this 8th day of February, 1897.

Session Laws of 1897.

No. 28.

An Act to Amend an Act entitled: "An Act Authorizing Railroad Companies to Construct and Extend their lines of Railroad into or through other Territories or States, and to Purchase or Lease other Railroads, and to Sell and Lease Railroads." Approved February 8th, 1897.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

Section 1. That section 1 of an act entitled "An act authorizing Railroad Companies to Construct and Extend their lines of Railroad into or through other Territories or States, and to Purchase or Lease other Railroads, and to Sell and Lease Railroads," be and the same is hereby amended to read as follows:

Sec. 1. That any railroad company now or hereafter existing under the laws of this territory may construct and extend its line of railroad into or through any other territory or state, upon such terms and regulations as may be prescribed by the laws of such territory or state, and any such railroad company may purchase or lease the railroad

constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this territory, or any other territory or state, with all the rights, privileges or franchises thereto appertaining, or may buy the stock and bonds, or either, of any such company; and any railroad company now or hereafter existing under the laws of this territory, may, with the consent of the holders of two-thirds of its entire capital stock, given by a vote at a meeting, or in writing without a meeting, sell or lease its railroad, franchises and appurtenances to any railroad corporation organized under the laws of this territory, or of any other territory or state; provided, however, that no purchase or lease under this act shall be entered into, unless the line of railroad so purchased or leased, or the railroad of the company whose stock shall be purchased, shall, when constructed, form a branch of, or a continuous line with, the railroad of such purchasing company, either by direct connection therewith, or through an intermediate line or lines, constructed or to be constructed, which such first mentioned railroad company shall own, lease or have the right by contract or otherwise, to use or operate: Provided that upon the purchase of any railroad under the provisions of this act, the corporation purchasing the same shall assume all the debts, liabilities and obligations existing at the time of the purchase against the railroad so purchased: provided, also, that when a railroad is purchased under or by virtue of any sale under an execution or by virtue of any decree of any court, such purchase shall be subject to such obliga-

tions as may be provided for by the judgment or decree of the court, and no other.

Sec. 2. Whenever any railroad or part thereof, situate in this territory, or any railroad corporation organized under the laws of the United States, or of any state or territory, or of this territory, shall be sold by virtue of a judgment or decree of any court, or by virtue of any execution issued upon any judgment, such railroad or part thereof, together with any lands or other property, franchises, rights, immunities, exemptions and powers of such railroad company may be purchased at such sale, or from the immediate purchasers at such sale, by any corporation of this territory, or of any other state or territory, or of the United States, which may be authorized by its charter or by the laws of such state or territory or the United States, to purchase or acquire such, or similar property, and such purchasing corporation shall thereupon become vested with all the property purchased, together with all the franchises, rights, immunities, exemptions and powers belonging, or appertaining thereto or to the corporation whose railroad or other property may be purchased; and shall have all the rights, franchises, powers, and immunities which are now given or which may be hereafter given to railroad companies organized under the laws of this territory, save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of this territory in reference to inducing the building of new railroads.

Sec. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after the date of its passage.

Approved March the sixteenth, 1897.

REVISED STATUTES OF ARIZONA, 1901.

Section 3858. (Sec. 28.) Except as in this title otherwise provided, all property shall be assessed in the name of the real owners, if the same can be reasonably ascertained, and if not, then in the name of "unknown owners" with a particular description of the property assessed sufficient for identification and the property of corporations or companies constructing canals, ditches, flumes, plank roads, gravel roads, telegraph lines, and similar improvements, shall be assessed to the company or corporation in the respective counties in which said improvement shall be situated; and railroad property shall be assessed as follows: On the first Monday in June in each year the territorial board of equalization shall meet at the office of the territorial auditor and they shall meet from day to day thereafter until the business of said board as hereinafter provided shall be accomplished. The duties of said board shall be to assess all taxable property in this territory belonging to railway corporations, except lots or parcels of real estate owned by the road within each county, and improvements thereon, and other improved property not connected with the operation of such road and located in any county

which shall be taxed in the county where situate. The president, vice-president, general superintendent, auditor or general officer of any corporation operating any railway in this territory, shall furnish said board, on or before the first Monday in June in each year, a statement, signed and sworn to by one of such officers, showing in detail the whole number of miles of railroad in each county, also the whole number of miles owned, operated or leased in the territory by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind and the value located in each county in the territory; second, also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight and other cars or property owned by such railway, and on railways which are a part of lines extending beyond the limits of this territory; the returns shall show the actual proportion of the amount and full cash value of the rolling stock in use on the corporation's line which is necessary for the transportation of the freight and passengers, and the operation of the railroad in this territory during the year for which the return is made. The return shall also show the amount and value of property hereinafter designated in this section, and such further information shall be furnished as the board may in writing require. If said officers fail to make such statement, said board shall proceed to assess the property of the corporation so failing, and shall add thirty per cent. to the value thereof as ascertained and determined by the said board. The said property shall be valued

at its full cash value, and assessments shall be made upon the entire railway within this territory, and shall include the franchise, right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, buildings, telegraph lines and all other property real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said board shall take into consideration all matters connected with said road necessary to enable them to make a just and equitable assessment of said railway property. On or before the third Monday in June in each year said board shall transmit to the board of supervisors of each county through or into which any railway may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same as fixed by a *pro rata* distribution per mile of the assessed value of the whole property herein specified, with a description of the whole of said assessed property within the county, by metes and bounds or other description sufficient for identification. And the said assessment and *pro rata* shall be made with reference to the value of the property belonging to said railway other than the main track situate in each county and municipality through or into wheih said railway extends. Where the railroad of a railroad corporation lies in several counties, its rolling stock must be apportioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole rolling stock the same ratio which the number of miles of the road in such county bears to the whole number

of miles of such road lying in this territory. Said board of supervisors shall cause the county assessor to enter said statement with the said description upon the assessment roll of said county under the proper heads therefor, with the total value of said assessed property carried out. At the first meeting of the board of supervisors held after said statement is received by it, they shall make and cause to be entered in its minutes, an order stating and declaring the length of the main track and the assessed value of such railway, lying in each municipal corporation within their county, through which their railway runs, as fixed by the said territorial board of equalization, which shall constitute the taxable value of said property for taxable purposes, and the clerk of said board of supervisors shall transmit a copy of said order to the city council or trustees of such municipal corporation. All such railway property shall be taxable upon said assessment by the same officers and for the same purposes as the property of individuals within such counties and municipalities. If any railway company or any person shall not be satisfied with the assessment of the property belonging to said company by the territorial board of equalization, it or they may appear before said board at its meeting in August and show why such assessment should be lowered or changed.

Grand Canyon Railway Company v. *Treat, Treasurer, et al.*, 95 Pacific Reporter, 187, decided by the Supreme Court of Arizona, March 27, 1908.

1. TAXATION—EXEMPTIONS—STATUTORY PROVISIONS—CONSTRUCTION.

Section 8, Act No. 3, p. 6, 19th Leg., provides that

nothing contained in the act shall be construed to give to any corporation created under it any exemption from taxation created by any existing or future exemption laws of the territory. *Held*, that the purport of the act was that a corporation created pursuant thereto should not be deemed to acquire by reason of any of the terms of the act an exemption from taxation, and further, that it should not be held that property acquired by it should be exempt from taxation because, by operation of an existing or subsequent exemption act, it was exempt under its former ownership, or because, by operation of such exemption act, its former owner was exempt, and it was not intended to prevent future legislatures from expressly permitting a tax exemption to accompany the exempt property to a successor in interest, or to be availed of by the successor of an exempt owner.

2. SAME.

The same meaning must be given to the saving clause of section 2, Act. No. 28, p. 66, 19th Leg., providing that a purchaser of a railroad sold by virtue of a judgment or decree of court shall be vested with all the property purchased, together with all rights and exemptions appertaining thereto, save and except only the exemption from taxation which now exists or may hereafter be given under existing or future exemption laws of the territory in reference to inducing the building of new roads.

3. SAME.

Act. No. 68, p. 79, 20th Leg. (Act March 16, 1899), provides that for the purpose of inducing and encouraging the construction of railroads the capital

stock, franchises, right of way, superstructures, and all other property used or necessary in the construction and operation of railroads to be conducted as common carriers, and whether owned or operated by a person or persons, association or railway corporation, their or its successors or assigns, shall be exempt from taxation for ten years from the date of the passage of the act. *Held,* that such act perpetuated the exemption unto the successors of the original owner of a railroad constructed pursuant to the act.

4. SAME—"SUCCESSOR."

A corporation organized by purchasers at a mortgage foreclosure sale of a railroad constructed pursuant to Act No. 68, p. 79, 20th Leg., exempting such railroads and their "successors" from taxation, is the successor of the company commencing the construction of the railroad within the meaning of the act, so as to be entitled to the exemption provided for therein.

(Ed. Note.—For other definitions, see Words and Phrases, vol. 7, pp. 6747-6749; vol. 8, p. 7808.)

Appeal from District Court, Coconino County; before Justice Richard E. Sloan.

Action by the Grand Canyon Railroad Company against J. R. Treat, as treasurer and ex-officio tax collector of the county of Coconino, to restrain the collection of certain taxes. From a judgment sustaining a demurrer to plaintiff's amended complaint, it appeals. Reversed and remanded, with instructions to overrule the demurrer.

The Santa Fe & Grand Canyon Railroad Company, theretofore duly incorporated under the laws of Ari-

zona for the purpose and with the power, among others, of constructing, maintaining, and operating a railroad from the town of Williams in Coconino county to the rim of the Grand Canyon of the Colorado River in Arizona, distant therefrom about 70 miles, for the carriage of passengers and freight as a common carrier, filed with the Secretary of the territory, on August 19, 1899, a written statement designating the general course and terminal points of the railroad which it proposed to construct. The entire line of said railroad was located upon the ground by a survey, and the location designated and fixed by the survey stakes were duly adopted as the definite line of location of said road by the board of directors of said company on October 7, 1899. Thereafter, and within six months after the written statement above mentioned was filed with the Secretary of the territory, the work of constructing said road was in good faith commenced on October 30, 1899, and a written statement setting forth the date and place of such construction was filed with the Secretary of the territory. Construction was diligently prosecuted thereafter, and before October 22, 1900, the company had completed 56.34 miles of the road, and on December 22, 1900, filed with said Secretary of the territory a plat of the road which it had thus constructed. All of these things, except the incorporation of the company, were done in compliance with Act No. 68, p. 79, of the Twentieth Legislative Assembly of the territory of Arizona, approved March 16, 1899, and entitled "An act to induce and encourage the construction of railroads within this territory." Thereafter in a suit brought for the fore-

closure of a mortgage securing the corporate indebtedness of the company the district court of Coconino county, on June 8, 1901, issued a decree directing a special master to sell all of the property, rights, franchises, and privileges of the said company, including all exemptions from taxation owned or possessed by it, or which it or its assigns may hereafter acquire, own, or possess through or under the charter of said railroad company. Under this decree the special master on July 18, 1901, sold all of said property and other things above mentioned to E. D. Kenna, Byron L. Smith, and James H. Eckels, which sale was, on July 20, 1901, confirmed, and the property and things sold were thereupon delivered into the possession of the purchasers. Said purchasers, thereafter associating with themselves C. L. Sterry and T. J. Norton, organized the appellant corporation, the articles of incorporation of which were filed with the Secretary of the territory on August 10, 1901. Appellant was formed for the purpose and with the power, among others, to acquire, own, maintain, and operate the railroad sold as aforesaid, and to complete the construction of the same upon the route and right of way of the Santa Fe & Grand Canyon Railroad Company theretofore surveyed, and to acquire, own, use, and enjoy the franchises, rights, privileges, immunities, and exemptions acquired, held, and enjoyed by that company. About August 16, 1901, a deed conveying all of the property, rights, privileges, franchises, and exemptions sold to and purchased by the said E. D. Kenna, Byron L. Smith, and James H. Eckels at the sale under foreclosure above mentioned to the ap-

pellant herein, theretofore executed and delivered by the said purchasers, was placed of record on page 508, in Book 13 of Deeds, of the public records of Coconino county. Appellant thereafter continued the construction of said railroad upon the location thereof which had been made by its predecessor, and completed the work on September 12, 1901. Thereafter, on November 8, 1901, the appellant filed with the Secretary of the territory a map showing the portion of said road constructed during the year ending October 22, 1901, amounting to 10.07 miles. During the month of September, 1901, appellant located at its northern terminus an area of 20 acres for station grounds, and filed a map thereof with the Secretary of the Interior, which was, on August 18, 1905, duly approved by said Secretary. Appellant thereafter, in order to care for its passengers, erected upon said station grounds hotels and appurtenances, and has at all times since maintained on said grounds hotels, with electric and power plant to supply light, heat, and power for said hotels and its depot and other buildings as situated on said station grounds, and used by it in its business. In the year 1906 the assessor of Coconino county and the board of equalization of the territory levied and assessed upon the aforesaid property of the appellant county and territorial taxes in the sum of $11,975.63. Against this assessment the Grand Canyon Railway Company entered a formal protest before the territorial board of equalization, in which it claimed that it was organized and succeeded to the property of the Santa Fe & Grand Canyon Company under the provisions of, and by compliance with, the requirements of Act No.

3, p. 5, of the Session Laws of 1897; that the property taxed was entitled to exemption from taxation by virtue of the terms of section 1, Act No. 68, p. 79, of the Session Laws of 1899, whether in the ownership and possession of the Santa Fe & Grand Canyon Company, or of it (the Grand Canyon Railway Company), as the successor of the former corporation. Upon the refusal of the board of equalization to vacate or set aside the assessment and the listing of the tax for collection the Grand Canyon Railway Company brought this action in the district court to restrain the collection of such taxes, on the ground that such property was exempt from taxation, and set forth in its complaint the facts as above stated; and, by amendment to said complaint, in addition thereto pleaded *in extenso* the certificate of incorporation of the said company. To the amended complaint the trial court sustained a general demurrer, without leave to amend, and entered judgment for the defendant in accordance therewith, from which judgment and ruling an appeal has been taken to this court. The appellant has presented its assignment of errors wherein it asserts that the court erred in sustaining the demurrer to appellant's amended complaint, and that the court erred in awarding judgment upon such order in favor of appellees, for upon the facts stated in the amended complaint and admitted by the general demurrer thereto the property mentioned in the amended complaint was and is exempt from taxation.

T. J. Norton, Paul Burks, and U. T. Clotfelter, for appellant. Henry F. Ashurst and E. M. Doe (E. S. Clark, Atty. Gen., of counsel), for appellees.

DOAN, J. This appeal is prosecuted upon the theory that section 1 of Act March 16, 1899, p. 79, No. 68, which provides "that for the purpose of inducing and encouraging the construction of railroads, other than street and electric railroads, within this territory, the capital stock, franchise, right of way, superstructures, betterments, telegraph lines, and all other real, personal and mixed property used or necessary in the construction and operation of railroads to be conducted as common carriers of freight and passenger, other than street and electric railroads, hereafter constructed in accordance with the provisions of this act, and whether owned or operated by a person or persons, association or railway corporation, his, their or its successors or assigns, be and the same is hereby declared to be exempt from any and all manner of taxation for and during the period of ten years from and after the date of the passage of this act," established a valid exemption from taxation for the stock, franchises, right of way, superstructures, and all other real, personal, and mixed property used or necessary in the construction and operation of railroads constructed in accordance with the provisions of that act, whether owned and operated by the original associations or corporations that constructed said roads and created or established such other property in compliance with the provisions of said act, or owned and operated by the successors of such associations or corporations.

It is contended by the appellees that appellant, having acquired the property by virtue of the provisions of Act No. 3, p. 5, of the Nineteenth Legis-

lative Assembly, is subject to the limitations of the said act, and that section 8, p. 6, thereof, which provides, "nothing in this act contained shall be deemed or construed to give any corporation created under it any exemption from taxation created by any existing or future exemption laws of the territory of Arizona," prevents the appellant from claiming for the property thus acquired any exemption from taxation. In determining the question whether upon the facts alleged in the amended complaint, and by the general demurrer thereto conceded, the property upon which the tax was levied was and is exempt from taxation in the hands of the appellant, as the successor of the original owner, we first consider whether such exemption is the grant of Act No. 68, p. 79, of the Twentieth Legislature, or of Act No. 3, p. 5, of the Nineteenth Legislature; second, if the exemption is conferred by the grant of Act No. 68, p. 79, Laws 1899, independent of Act No. 3, p. 5, Laws 1897, is there, nevertheless, such a limitation placed upon the appellant corporation by the terms of either its certificate of incorporation or the law which authorizes its incorporation and its acquisition of this property (being Act No. 3, p. 5, *supra*), as will prevent that corporation from enjoying the exemption or prevent the property from being exempted from taxation by reason of said corporation being authorized by the enabling legislation contained in said Act No. 3, p. 5, Laws 1897, to succeed to such property and to hold and operate it? The language of Act No. 68, p. 79, Laws 1899, clearly establishes that the exemption claimed is granted by that act, and it necessarily follows that, unless there is

such limitations placed upon the appellant corporation, either by its articles of incorporation, or by Act No. 3, p. 5, Laws 1897, as to prevent its availing itself of such exemption, the same is still in force. Exemptions from taxation so far as we have examined the cases cited are found to be divided into two classes: Exemptions of one class, by their terms, are personal, being such as have been by legislative enactment granted either directly to persons or corporations that are named in the acts thus granting them, or granted to such persons or corporations as may comply with the requirements of such legislative enactment, and thus bring themselves within the granting clause thereof, and by so doing make themselves the beneficiaries of such granting clause. Exemptions of the other class might be called "impersonal," and the grants thereof might be termed "legislation *in rem*," and are those cases in which the exemption is granted directly to the property in question, and in which the granting clause generally provides that the property of the classes designated, when acquired or created, in compliance with the provisions of such enabling legislation, should be exempt from taxation. This latter class of legislation can directly exempt from taxation such property while owned or controlled by the persons or corporations thus acquiring it or bringing it into existence, in which cases the exemption will cease when the property passes out of the ownership or control of those thus acquiring or creating it, or the legislative act may either provide that such exemption shall attach to the property after passing from the ownership and control of those who cre-

ated it, in compliance with the terms of such beneficial legislation, into that of their successors or assigns, or may simply declare that such property shall be exempt from taxation, without restricting the ownership or control, and leave it to the law to continue the exemption after transfer of title as an appurtenant to the property.

In regard to the acquisition by a successor of an exemption granted to a corporation personally (being the first class mentioned) the United States Supreme Court has said in a recent case: "The state by virtue of the same power which created the original contract of exemption, may, either by the same law or by subsequent laws, authorize or direct the transfer of the exemption to a successor in title. In that case the exemption is taken, not by reason of the inherent right of the original holder to assign it, but by the action of the state, authorizing or directing its transfer. As in determining whether a contract of exemption from a governmental power was granted, so in determining whether its transfer to another was authorized or directed, every doubt it resolved in favor of the continuance of the governmental power, and clear and unmistakable evidence of the intent to part with it is required." *Rochester Railway Co.* v. *Rochester*, 205 U. S. 236, 27 Sup. Ct. 469, 51 L. Ed. 784. The case at bar presents an instance in which the grant is not personal, but is made direct to the property. The territory, in Act No. 68, p. 79, Laws 1899, to induce the early building and construction of railroads, presumably for its benefit and advantage provided that the property, roadbed, franchises, right of way, superstruc-

tures, improvements, telegraph lines, and all other property used in the construction and operation of railroads as common carriers of freight and passengers thereafter constructed in compliance with the provisions of that act, should be exempt from taxation for the period of 10 years, whether owned or operated by a person, association, or railway corporation or its successors or assigns. It then required a certain statement to be filed with the Secretary within six months from that date; construction to be commenced within six months thereafter, and pursued under certain restrictions to completion. The compliance with these requirements by the predecessor of the appellant, and the construction of the road, and the creation by it of this property in accordance with the terms and conditions of that act, constituted a contract, by the terms of which this property was exempt from taxation for that term of years, and the United States Supreme Court, in a case very similar to this, has held, not only that such an exemption, when granted without words of limitation, attaches to the property as an appurtenant and goes to the purchaser, but that the sovereign power itself could not abrogate such a contract after its acceptance by a grantee by complying with the terms of the act. This was a case where the Delaware Indians prior to 1758 had claims upon large tracts of land in New Jersey. On the 9th of August, 1758, the representatives of the Indians proposed to the commissioner of the government that the government should purchase a tract of land on which they might reside, in consideration of which they would release their claim to all other

lands in New Jersey. In acceptance of this proposition the Legislature of New Jersey, on the 12th of August, 1758, passed an act that, among other provisions, authorized the purchase of lands for the Indians, restrained them from granting leases or making sales thereof, and enacted "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax." Under this act lands were purchased and conveyed to the trustees of the Indians for their use. The Indians continued in possession of the lands thus conveyed to them until 1801, when the Legislature of New Jersey authorized a sale of their lands in that state. This act contains no expression in any manner respecting the privilege of exemption from taxation which was annexed to those lands by the act under which they were purchased and settled on by the Indians, nor does the deed conveying the said land to the purchaser thereof. In 1803 the land was sold under the last-recited act to George Painter and others. In October, 1804, the Legislature passed an act repealing that section of the act of August, 1758, which exempted the lands therein mentioned from taxes. The lands were then assessed and taxes demanded. The grantees of the land proceeded in the courts of New Jersey to test the validity of the repealing act, and from an adverse decision of the highest courts of the state the case was carried to the Supreme Court of the United States, which court, speaking through Chief Justice Marshall, said: "The question, then, is narrowed to the inquiry whether in the case stated a contract existed, and whether that contract is violated by the act of 1804. Every requisite

to the formation of a contract is found in the proceedings between the then colony of New Jersey and the Indians. The subject was a purchase on the part of the government of extensive claims of the Indians, the extinguishment of which would quiet the title to a large portion of the province. * * * The consideration agreed upon * * * is a tract of land with the privileges of exemption from taxation. * * * The privilege, though for the benefit of the Indians, is annexed by the terms which create it to the land itself, not to their persons. It is for their advantage that it should be annexed to the land because, in the event of a sale, on which alone the question could be material, the value would be enhanced by it. The land has been sold with the assent of the state, with all its privileges and immunities. The purchaser succeeds, with the assent of the state, to all the rights of the Indians. He stands, with respect to this land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it. It is therefore considered by the court that the said judgment be reversed and annulled, and that the case be remanded to the said court of errors that judgment may be rendered therein annulling the assessment in the proceedings mentioned, so far as the same may respect the land in the said proceedings also mentioned." *State of New Jersey* v. *Wilson*, 7 Cranch. 164, 3 L. Ed. 303. This case is approved in *Given* v. *Wright*, 117 U. S. 648, 655, 6 Sup. Ct. 907, 910, 29 L. Ed. 1021, wherein the Supreme Court said: "We do not feel disposed to question the decision in *New Jersey* v. *Wilson*.

It has been referred to and relied on in so many cases from the day of its rendition down to the present time that it would cause a shock to our constitutional jurisprudence to disturb it now." Both of these cases are again cited by the U. S. Supreme Court in *Jetton et al.* v. *University* (decided February 24th, 1908) 28 Sup. Ct. 375, 52 L. Ed. 666. In *New Jersey* v. *Wilson* and *Given* v. *Wright* neither the law authorizing the sale nor the deeds conveying the land said anything about exemption from taxes, while in the case at bar such exemption is specially named in the decree of the court ordering the sale and in the deed of conveyance, and the law under which the sale was made authorizes the acquisition under such sale of "the property sold, together with * * * any franchises, rights, privileges, and immunities of said corporation" whose property is thus sold. "The words 'rights, privileges, and immunities' when used in a statute of the kind under consideration, are certainly full and ample for the purpose of granting an exemption from taxation." *Phoenix F. & M. Ins. Co.* v. *Tenn.*, 161 U. S. 174, 16 Sup. Ct. 471, 40 L. Ed. 660. It will be noticed that the language of section 1, Act No. 68, p. 79, which created the original contract of exemption in this case, has authorized and directed, not the transfer, but the continuation, of exemption to the property while in the ownership and possession of a successor in title in plain and direct language, by saying that such property, "whether owned or operated by a person or persons, association or railway corporation, his, their or its successors or assigns, is hereby declared to be exempt

from any and all manner of taxation," and has thereby fully met the qualifying expression contained in the latter part of the rule cited above for the transfer of exemptions personal to the grantee corporation, which states that "such transfer requires clear and unmistakable evidence of the intent to grant it."

This leaves for consideration only the question whether there is such limitation placed upon the appellant by its certificate of incorporation, or by the terms of Act No. 3, p. 5, Laws 1897, under which it was incorporated, as would deprive it of the power of claiming or enjoying this exemption. It is claimed by the appellees that "no corporation can receive by transfer from another an exemption which is inconsistent with its own charter or the laws of the state then applicable, even though under legislative authority the exemption is transferred by words which clearly include it." We omit citations, as this is conceded to be the settled rule. The certificate of incorporation of the appellant, which constitutes its charter, provides for the formation of the corporation for these, among other purposes: "To acquire, own and operate the aforesaid railroad; to acquire, own, use, and enjoy the railroad and appurtenances, franchises, rights, privileges, immunities, and exemptions, and all other properties acquired by such purchasers at said sale as heretofore recited." We find nothing elsewhere in the charter inconsistent with these provisions. We find nothing in the general laws of the territory inconsistent with the enjoyment by the appellant of this exemption, and nothing is cited by counsel, except

Act. No. 3, p. 5, Laws 1897, aforesaid. Upon examining Act No. 3, p. 5, of the Nineteenth Legislature, under the provisions of which the appellant was incorporated, we find that section 6 provides: "Such new corporation shall thereupon be vested with, and shall be entitled to exercise and enjoy all the rights, privileges, franchises, immunities and powers which belong to or could be exercised by the corporation whose property, or part of whose property was acquired by such purchasers, as aforesaid, and may acquire, own, operate and enjoy all or any part of the property and works of such corporation in the territory of Arizona, or elsewhere, and may conduct its business generally under and in the manner provided in the charter of such last mentioned corporation, or under the laws relating thereto, with such variations in manner or form of organization as such purchasers and their associates may deem necessary and set forth in such certificate." This language expressly vests such corporation with, and entitles it to exercise and enjoy, all the rights, privileges, franchises, immunities, and powers which belonged to or could be exercised by the corporation whose property was acquired by the purchasers who afterwards formed such corporation, and as the corporation, whose property was, in this instance, thus acquired, enjoyed among its privileges and immunities an exemption from taxation for the property in question, it would logically follow that by this section of the act the appellant corporation was vested with and entitled to enjoy the same immunities, which would include the exemption of this property from taxation, if the ex-

emption had been granted as a personal immunity to the corporation, but, as in this instance, the exemption was granted directly to the property instead of the corporation, and by the terms of the granting clause the property was directly exempted from taxation, whether in the ownership and control of the former corporation, or of its successors or assigns, the language above quoted a fortiori expressly empowers the present corporation to hold the property in question exempt from taxation. It appears that, if the language vesting in a new corporation contemplated by Act No. 3, p. 5, Laws 1897, the rights, powers, privileges, franchises, and immunities considered necessary and appropriate for its existence and operation had stopped here, section 8 would have had no place in the act, and would not have appeared. But after thus vesting the new corporation with the rights, privileges, franchises, immunities, and powers belonging to and exercised by the former corporation the act proceeded, in section 7, to further endow such corporation, in the following language: "Sec. 7. That such corporation shall be entitled to possess any and all rights, privileges, franchises, immunities and powers which are now given, or which may be hereafter given to any railroad company organized under the general laws of this territory." It will be seen that the language of section 7 thus goes beyond the investiture of the new corporation with the rights, powers, privileges, and immunities of the old corporation to which it was the successor, and declares that such new corporation shall, in addition thereto, be entitled to possess and enjoy "any and all rights,

privileges, franchises, immunities and powers which are now given, or may be hereafter given to any railroad company organized under the general laws of this territory." The very broad and comprehensive grant thus expressed necessitates the limitation contained in section 8, without which it would have been possible for a corporation organized under the provisions of this act, not only to claim, assume, and exercise all the rights, privileges, powers, and immunities of its predecessor, but a corporation organized under this act that might acquire the property of a former corporation that would otherwise be subject to taxation in their hands, could, under the broader grant in section 7, claim an exemption from taxation, if any other railroad corporation organized under the general laws of the territory might have and be enjoying exemption from taxation under any of the exemption laws then in existence, or that might thereafter be enacted. The logical interpretation of the limitation contained in section 8 would read it as saying practically that "such new corporation shall, under the provisions of section 6, be vested with all the rights, privileges, powers, and immunities enjoyed by its predecessors without any limit to the same, except that they shall have been enjoyed by such predecessor, and shall likewise be vested with all additional rights, privileges, franchises, immunities, and powers that are now given or may be hereafter given to any railroad company organized under the general laws of this territory, and which may not have been possessed and enjoyed by the predecessor of such new corporation, save and except that such new corporation, having pur-

chased property the exemption of which from taxation after change of ownership was not otherwise provided for, cannot, by virtue of such grant of powers, privileges, and immunities, claim any immunity from taxation for the sole reason that some other railroad company organized under the laws of this territory may have and be enjoying such exemption, because in the latter instance such exemption from taxation, if enjoyed by such new corporation, must necessarily be thus enjoyed solely by reason of its having been given by the provisions of section 7 of this act."

Counsel have referred at length to the grants and limitations of Act No. 2, p. 4, and Act No. 28, p. 65, of the Nineteenth Legislature, but have at last agreed that these acts are not applicable in this case. Act No. 2, p. 4, as amended by Act No. 28, p. 65, Laws 1897, empowers territorial or federal corporations to acquire railroads sold under decree of courts by direct purchase at foreclosure sale, and Act No. 3, p. 5, Laws 1897, authorizes such purchase by private persons, and the subsequent incorporation of such persons and their associates as a domestic corporation under the laws of this territory, which was the mode of procedure by the appellant. It is not necessary to notice the very interesting discussion that has been presented in the briefs as to the power of the corporation to assign or transfer the exemption to its successor, because that theory is applicable in the case of the other class of exemptions, termed above "personal exemptions." This being a direct grant of exemption to the property, and designated in plain and concise terms

to run with the property when owned and controlled by the successors and assigns of the creator thereof, as well as when owned and controlled by such original owner, gives that question no place in this discussion.

The language of Act No. 68, p. 79, Laws 1899, clearly granting the exemption from taxation to the property when owned by the successor of the original corporation, and there appearing nothing in the charter of the appellant, or the law under which it was incorporated and authorized to acquire this property, to deprive it of the benefit of such exemption, but both such charter and law empowering in express terms the appellant to receive and enjoy the benefit of such exemption, the district court erred in sustaining the demurrer to the complaint, and in rendering judgment upon such order against the plaintiff.

The judgment of the lower court is reversed, and the case remanded, with instructions to the district court to overrule the demurrer to the complaint, and take such further proceedings as are not inconsistent with this opinion.

Nave, J. I concur substantially in the foregoing opnion. To my conception the purport of section 8, Act No. 3, p. 6, Laws 1897, is that a corporation created pursuant to that act should not be deemed to acquire by reason of any of its terms, an exemption from taxation, and, further, that it should not be held that property acquired by it should be exempt from taxation merely because, by operation of an existing or subsequent exemption act, it was exempt under its former ownership, or because, by opera-

tion of such exemption act, its former owner was exempt. I take it that Act No. 3, p. 5, Laws 1897, was not intended (it could not be operative if it were intended) to prevent future Legislatures from expressly permitting a tax exemption to accompany the exempt property to a successor in interest, or to be availed of by the successor to an exempt owner. By unequivocal terms the exemption from taxation created by Act No. 68, p. 79, Laws 1899, is perpetuated during the period of exemption unto the successors of the original owner. There can be no question that the appellant is the successor of the Santa Fe & Grand Canon Railroad Company, despite the fact that it has acquired its property by the intermediate course of judicial foreclosure sale to natural persons who subsequently organized it. *I. & G. N. Ry. Co.* v. *Smith Co.*, 65 Texas, 25. I do not feel clear that Act No. 28, p. 65, Laws 1897, referred to in the concluding portion of the opinion, is without bearing upon Act No. 3, p. 5, Laws 1897; but, in my judgment, the saving clause concluding section 2, Act No. 28, p. 66, Laws 1897, has the same purport as section 8, Act. No. 3, p. 6, Laws 1897.

CAMPBELL, J., concurs.

KENT, C. J. I concur in the result. I concur in the views expressed by Mr. Justice NAVE. I do not understand them to be at variance with the views expressed by Mr. Justice DOAN on the same points. I concur also substantially in the views expressed by Mr. Justice DOAN; but I am not fully in accord with some distinctions made by him in his opinion, or his reasons for such distinctions. On these points it is not desirable to elaborate the reason for my nonassent.